ACT Government

Inquiry into Insecure Employment in the ACT

Submission of

Recruitment & Consulting Services Association (RCSA)

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RCSA Submission Highlights

The Recruitment & Consulting Services Association (RCSA) is pleased to make this submission to the ACT Inquiry into Insecure Employment in the ACT. The primary focus of this inquiry is the issue of insecure work in the ACT within the context of the transformation of the Australian employment structure to reflect the needs and opportunities in the modern and, global economy.

RCSA has actively participated in similar inquiries in Queensland, South Australia and Victoria. Findings from those inquiries recommended the adoption of a coordinated national approach to address exploitation of workers in high risk sectors.

RCSA urges the Committee to consider myriad of changes that have occurred both in Australia, our region and globally and to look to identify and understand the benefits and issues arising from the range of employment arrangements that operate in the ACT.

Every-day tens of thousands of workers go to work in the ACT as a result of the great work of professional on-hire and workforce services. ‘Insecure’ is not how a majority of those workers describe the jobs they do each day to feed their families and send their children to school.

In fact, a growing number of Australian workers are preferencing flexible work arrangements that allow them to balance their work with parenting duties, so they are able to work closer to home or to spend a few hours each week coaching a local football team.

The construct of ‘traditional Australian employment’ as full-time, ongoing employment in a 38 hour work week is at odds with the realities of modern workplaces in which 75% of full-time Australian workers put in more than 40 hours and 15% more than 50 hours per week1.

The preferences of a growing number of Australian workers are changing. The Committee has the opportunity to fully understand the changes that are occurring in employment in the ACT and to focus attention on the high risk sectors in which exploitation occurs, rather than seek to vilify the professional ‘Labour Hire’ sector that has a long history of provides work opportunities for semi-skilled, skilled and professional workers in the ACT.

Key points of this submission include:

1. RCSA submits that as a fact-finding inquiry, the ACT government should focus its attention on identifying the areas and industry sectors in which exploitation is most prevalent.

2. The Committee should also examine ways to harness the benefits of genuine professional on-hire worker services rather than consider that all on-hire and ‘Labour hire’ firms are the same and seek to restrain them by introducing new forms of negative regulation which will do little to prevent non-compliant behaviour amongst exploitative labour contractors.

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1 6333.0 - Characteristics of Employment, Australia, August 2014
3. Tendering and procurement practices provide the ACT Government with a platform on which to put in place arrangements that encourage best practice in the supply of contracting and workforce services. The ACT Government’s recent slashing of margins for on-hire firms supplying contractors to the ACT government is just one example of price-down procurement that encourages poor practices and cutting corners.

4. The Terms of Reference makes no mention of the non-compliance of online work platforms with employment standards and matters of exploitation raised for this Inquiry. There is a fine line between innovation and so-called exploitation and, just because these platforms place workers online, doesn’t exempt them from the standards that every other workforce services and ‘Labour Hire’ agency in the ACT must work to.

5. ‘Labour hire’ is an imprecise and commonly misused term. The absence of precise and consistent terminology in the employment services industry is contributing to confusion, especially when we examine exploitation of vulnerable workers by labour contractors within high risk sectors, and the imprecise use these terms in high risk sectors such as the horticulture and food processing industries.

6. RCSA is committed to achieving the right balance between the protection of vulnerable workers and the promotion of a responsive and flexible regulatory framework to ensure ACT businesses can compete in the national and international market and under changing economic conditions.

7. RCSA Members, in the provision of private employment services, provide work opportunities and improved working lives on a level which cannot be ignored. The on-hire worker services sector employs over 400,000 employees and generates $19 billion in revenue for the Australian economy.

8. The evidence from regulatory agencies is that genuine on-hire worker service firms demonstrate high levels of compliance and, in fact, are commonly better performers in workplace relations and WHS compliance than direct hire employers. Therefore, there is no justification for the introduction of restrictive regulation which will only increase costs and make non-compliant labour contractors comparatively cheaper and therefore more attractive to unsophisticated end-users.

9. RCSA submits that it is critical to avoid being influenced by ideologically inspired rhetoric in your examination of compliance within the on-hire sectors and, importantly, to separate out labour contracting firms, that make every effort to avoid legal compliance, from reputable on-hire worker service firms that are expert employers and specialists in compliance.

10. RCSA is finalising a national certification program for Employment Services Providers, including Labour-Hire, which has the support of the horticulture and agriculture sectors as well as unions and Government. It addresses six key areas:
   a. Fit and Proper Persons Test
   b. Work status and remuneration
   c. Financial assurance
   d. Safe Work
   e. Migration
   f. Decent accommodation (as applicable)
11. The Workforce Services Provider Certification scheme will provide a widely available register of Certified Employment Services Providers allowing buyers of services in the ACT to make informed choices. Certification is available to all employment service providers and is paid for by the employment service providers that seek certification.

12. RCSA’s proposed Employment Services Industry Code (ESIC) lays out a single national framework for regulation of the sector, without the need for licensing or more restrictive forms of regulation. It articulates professional standards of Equal Opportunity & Diversity, Service; Integrity & Good Faith, Co-operation, and Assurance in dealings for the supply and acquisition of employment services and would provide access to consumer and unfair competition remedies in circumstances where labour market exploitation occurred in contravention of the Code.
Introduction to RCSA

The Recruitment & Consulting Services Association Australia & New Zealand (RCSA) is the peak body for the recruitment and employment industry in Australia and New Zealand which includes recruitment services and on-hire worker services. It represents over 3,000 corporate and individual Members with over 60% of Australia’s on-hire workers being engaged by RCSA corporate members.

RCSA members assign (on-hire) and place employees and independent contractors within business, government and not-for-profit organisations operating within every industry and State in Australia. They also provide workforce consulting and HR services to improve the productive capacity of Australian business in an ever-changing global economy.

The RCSA membership is focused on promoting positive outcomes for business, workers and governments across Australia. The RCSA sets the benchmark for recruitment and on-hire industry standards through the establishment of codes, representation of the industry, education of members and stakeholder, research and business support.

RCSA members, as professional employers and labour market facilitators, operate in accordance with Australian workplace law and relevant standards. Their knowledge, understanding, interpretation and support of the law is evident in everyday dealings with clients, employees and independent contractors.

All RCSA member organisations and Accredited Professionals agree to abide by the ACCC authorised RCSA Code for Professional Conduct.

RCSA Code for Professional Conduct

RCSA has a Code for Professional Conduct (the Code) which is authorised by the ACCC. In conjunction with the RCSA Constitution and By-Laws, the Code sets the standards for relationships between Members, best practice with clients and candidates and general good order with respect to business management, including compliance. Acceptance of, and adherence to, the Code is a prerequisite of Membership. The Code is supported by a comprehensive resource and education program and the process is overseen by the Professional Practice Council appointed by the RCSA Board. The Ethics Registrar manages the complaint process and procedures with the support of a volunteer Ethics panel mentored by RCSA’s Professional Practice Adviser, Barrister Andrew Wood.

RCSA’s objective is to promote the utilisation of the Code and our proposed Employment Services Industry Code to achieve self-regulation of the on-hire worker services sector, wherever possible and effective, rather than see the introduction of additional legislative regulation. The Employment Services Industry Code (ESIC) would, if approved, become a prescribed industry code under Australian competition law.

A copy of the current RCSA Code for Professional Conduct is attached as Attachment 1 and further information is available upon request, including information on the process for resolution and enforcement.
Dispelling the Myths - On-hire Worker Services

RCSA believes it is of great importance the ACT Government understands the nature and role of the on-hire and ‘Labour hire’ sector in an Australian context and, to address a number of the myths and misinformation raised and implied in the Terms of Reference and the Issues Paper.

The workforce services industry, which covers a wide range of labour supply and employment placement services, was estimated, in 2015-2016, to generate revenues in Australia of $19 Billion. It is responsible for the employment of 400,000 on-hire workers and a further 100,000 skilled consultant staff in 10,000 businesses, who support employment services and labour supply operations in Australia.

1. On-hire employment, as a percentage of all employees, is stable and non-threatening
Despite the claims of some stakeholders, ‘Labour Hire’ is not growing at an alarming rate. In fact, according to the Productivity Commission report on the workplace relations framework (page 1092) on-hire employees are of “small magnitude” at 1.8% of the employed workforce.

The estimates of the proportion of employed persons paid through labour hire arrangements are of a similar (small) magnitude, but vary slightly between the ABS FOE and HILDA surveys. The ABS reports that in 2011, 1.3 per cent of employed persons were paid through a labour hire arrangement and the estimate from HILDA for 2013-14 is 2.4 per cent. The latter is broadly in line with a 2002 HILDA estimate of 2.9 per cent presented in a Productivity Commission staff working paper (Laplagne, Glover and Fry 2005).

The labour hire category in both the FOE and HILDA surveys appears to include employees, independent contractors and business operators who are hired by labour hire firms. However, it is only employees who are engaged through a labour hire arrangement who are of interest. Restricting the HILDA estimates to this group (and to avoid double counting), it is estimated that around 1.8 per cent of employed persons are employees on labour hire arrangements (HILDA adjusted, figure D.6).

2. Casual employees are NOT paid less than permanent employees
HILDA found that men and women have higher wages (wages per hour) in casual employment than full time employment (5% higher). However, with men permanent employment wages per hour are slightly higher than casual but not markedly. As Professor Sue Richardson, of the National Institute of Labour Studies at Flinders University observed, this is opposite to the image that part time and casual employment is lower paid work and is not a finding you would get in other countries.

In addition, 67% of workers had paid leave entitlements while 72% had stable earnings. Similarly, 75% usually worked the same number of hours each week while over 98% worked on a fixed term contract.

3. On-hire employment creates jobs and doesn’t necessarily replace direct hire employment opportunities
RMIT University research found that 51% of organisations using on-hire employees would not necessarily employ an equivalent number of employees directly if they were unable to use on-hire employees. In fact, 19% of organisations said they would rarely do so. Furthermore, 19% of RCSA Members’ on-hire employees eventually become permanent employees of the host organisation they are assigned to work for.
4. Flexible forms of work are necessary components of dynamic and inclusive labour markets
Flexible forms of employment such as fixed-term contract work, part-time work and temporary agency work are components of inclusive and dynamic labour markets, which are necessary and useful to complement open-ended full-time employment.

They are important not only as elements of flexibility for employers, but also because they contribute to the improvement of the quality of working life and to the employability of people by facilitating a better work-life balance, by reinforcing the ability of workers to find new employment when existing jobs disappear and by increasing their opportunities to acquire professional experience.

In particular, flexible forms of employment can help the most vulnerable groups, namely young people at the start of their careers, the long-term unemployed and low-skilled workers, to regain a foothold in the labour market by giving them the chance to acquire work experience and new skills. Flexible forms of employment are also key enablers for businesses to retain and create jobs whilst staying adaptable and competitive.

It is therefore misleading and counterproductive if trade unions and certain political groups misrepresent flexible forms of work as ‘precarious’ or insecure. According to the International Trade Union Confederation (ITUC), precarious work is characterised by atypical employment contracts, with limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease.

RCSA and employers internationally are concerned by the lack of clarity and usefulness of the definition of ‘precarious work’ and particularly by suggestions that flexible forms of employment are systematically precarious.

Precariousness, as defined by ITUC, prevails in the informal economy. RCSA is strongly committed to fundamental principles and rights at work. They therefore believe that illegal employment and jobs which clearly do not respect these principles must be unreservedly discouraged.

In responding to broader claims of insecure employment, RCSA relies upon the Position Paper of the International Organisation of Employers, attached to this Submission as Attachment 3.

5. On-hire workers are primarily employees, not contractors
There is a common misconception that on-hire workers are primarily engaged as independent contractors and therefore, not receiving employment protections. RMIT University research found that the majority of on-hire workers are employees and that on-hire workers engaged as independent contractors are primarily professionals. RCSA does not accept the engagement of unskilled and semi-skilled workers as independent contractors. RCSA is of the opinion that such workers are typically incapable of fulfilling the indicia required to sustain a genuine business to business relationship when working as an individual.

6. An increasing number of on-hire employees are employed on a permanent basis
RMIT University research found that 16% of on-hire employees are now employed on a permanent basis. On-hire permanent employment is more prevalent amongst larger firms that are able to pool client assignments and reduce the chance that an on-hire employee will be left without a suitable assignment. There are also examples of where a client’s wish for an on-hire employee to be assigned on an ongoing

basis to them and are willing to agree to a minimum period of notice of termination to ensure an employer of an on-hire permanent employee can provide the requisite period of notice.

7. **Business uses on-hire to help with recruitment and urgent labour requirements, not to reduce cost or pay**

RMIT University research found that the main reason that organisations use on-hire employee services is to resource extra staff (30%), cover in-house employee absences (17%), reduce the administrative burden of employment (17%) and overcome skills shortage issues (9%). Only 2% of organisations surveyed indicated that the primary reason for using on-hire employees was related to pay.

The National Institute of Labour Studies within Flinders University found, in its November 2014 analysis of the Use of Agency Staff in Residential Aged Care, that the main reason given by facilities for using agency nurses and agency personal care attendants is that recruitment of employees within the facility is too slow, and they need specialist skills that have been hard to recruit.

8. **Most on-hire workers are either skilled or professional and, therefore, less likely to be vulnerable**

RMIT University research into on-hire worker services conducted in 2003 found that 61% of RCSA on-hire employees are skilled or professional workers with the remaining 39% being semi-skilled or unskilled. In 2016, 90% of RCSA members reported the skill level of on-hire workers to be medium to high. It is critical that the ACT government does not introduce regulation which inadvertently stifles this significant segment of the industry in order to respond to exploitative behaviour of labour contracting firms in a handful of industry sectors.

9. **Where on-hire employees are employed on a casual basis they have improved opportunities for ongoing work as they are supplied to alternative workplaces**

RMIT University research found that half of all on-hire casual employees employed by RCSA Members are immediately placed in another assignment following the completion of their initial assignment. That is, they enjoy ‘back to back’ assignments without having to search for new work like those engaged in direct hire casual employment.

10. **Individuals are choosing to work as on-hire or casual employees and the reasons for their choice are not what you may expect**

RMIT University research found that 67% of on-hire employees chose to work as an on-hire employee and 34% prefer this form of work over permanent employment. The most important reasons for choosing on-hire employment were diversity of work, to screen potential employers, recognition of contribution and to receive payment for overtime worked.

In 2014 Flinders University conducted research into workers’ experiences of nonstandard employment and how it related to health and wellbeing and found that “our most striking findings were that the

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majority of the participants made a deliberate choice for casual employment and to explain this, almost most of these cited improved health and wellbeing as a motivation“.
The findings identified that over half of the participants described being ‘deliberate casuals’ and had chosen casual employment despite having the option of permanency in the same or very similar job.

Almost a third of all participants in the research explained that they had deliberately chosen casual work because it was protective of their health and wellbeing. Reduced responsibility, less ‘workplace politics’, less work-life conflict, and less job stress than in their prior (permanent) job were determining factors in their decision.

The Productivity Commission report on the Workplace Relations Framework observed, on page 208, that “given not everybody wants to work under the same conditions, these alternative employment forms partly satisfy the wide variety of preferences across the workforce. Whether it be the autonomy of independent contracting, the flexibility and the higher wage rate of the casual worker or the reduction in job search costs for the labour hire worker, each of these employment forms has some appeal to a large number of workers”.

11. **On-hire drives down segmentation of labour markets by providing a stepping-stone function that enables individuals to transition from education to work, from unemployment to employment and from job to job**

Based on data from the HILDA Survey\(^7\) for 2001 to 2010, on average, about 30% of on-hire workers will still be in that state one year later and 38% will have moved to permanent employment. After 10-years only 4% will still be an on-hire worker and 56% will be in permanent employment. Furthermore, the HILDA Survey has identified that casual male employees are far more likely to obtain permanent employment compared with being unemployed.

Therefore, if you have a choice between looking for work in casual employment and looking for work when unemployed, as a male, you are far better off being employed casually.

The 2015 Intergenerational Report clearly outlines that “continued efforts to encourage higher participation across the community would have widespread benefits for Australia’s economy and society” and RCSA members are at the forefront of workforce participation facilitation with members finding and matching individuals and work opportunities every day.

The work creation attributes of the industry are further explored in the Boston Consulting Group Report on ‘Adapting to Change’ which was provided as part of RCSA’s initial submission.

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\(^7\) The Household, Income and Labour Dynamics in Australia (HILDA) Survey
What is ‘Labour Hire’?

‘Labour hire’ is an imprecise and commonly misused term. RCSA has not used, nor encouraged, the use of the term for many years and utilises and promotes the term ‘on-hire’ which was incorporated into Australia’s Modern Awards in 2010.

The confusion associated with the use of multiple terms to describe on-hire worker services has resulted in confusion as to the method of engagement and the provision of correct entitlements to workers.

We are opposed to the use of the term ‘labour hire’ for the following reasons.

- The term is imprecise and non-descriptive.
- The term is, almost wholly, used to describe blue collar occupations within industries such as manufacturing, construction, logistics and mining. The term fails to account for the majority of on-hire occupations within industries such as health, business administration, telecommunications, information and communications technology (ICT), professional services, education, finance and hospitality;
- Queenslanders who found their job through a labour hire firm or employment agency are spread broadly across professional occupations such as: Specialised managers (9,800), Business, human resource and marketing professionals (7,000), road and rail drivers (5,300) and numerical clerks (5,200) being the most common occupations\(^8\).
- The term has grown, in general use, to describe all forms of outsourced labour service including contracting services and does not account for the true elements of genuine on-hire worker services where a worker is assigned to perform work under the general guidance and instruction of a host organisation.
- The term does not account for the method of engagement adopted i.e. employee or independent contractor.

Workers on-hired to a client to work under the client’s general guidance, instruction and supervision are also referred to as ‘agency workers’, ‘temporary employees’, ‘contractors’ and a range of other titles.

Outlined below is a selection of terms used within different industries and occupations to assist the inquiry to have a more informed discussion.

<table>
<thead>
<tr>
<th>Industry / Occupation</th>
<th>Common Terms for On-hire Workers</th>
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</thead>
<tbody>
<tr>
<td>Manufacturing and Logistics</td>
<td>Labour hire worker</td>
</tr>
<tr>
<td>Construction and Mining</td>
<td>Labour hire worker</td>
</tr>
<tr>
<td>Health</td>
<td>Agency worker</td>
</tr>
<tr>
<td>Media and Communications</td>
<td>Agency worker</td>
</tr>
<tr>
<td>ICT</td>
<td>Contractor</td>
</tr>
<tr>
<td>Professional e.g. engineers, scientists, managers</td>
<td>Contractor</td>
</tr>
<tr>
<td>Hospitality</td>
<td>Temp’</td>
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<tr>
<td>Office Support</td>
<td>Temp’</td>
</tr>
<tr>
<td>Agriculture and Horticulture</td>
<td>Labour hire worker</td>
</tr>
<tr>
<td>Cleaning services</td>
<td>Contractor</td>
</tr>
<tr>
<td>Security services</td>
<td>Contractor</td>
</tr>
</tbody>
</table>

\(^8\) ABS Cat. No 6333.0, Characteristics of Employment, Australia, August 2014: Customised Reports, Unpublished
RCSA promotes the use of the term on-hire employee for employees and on-hire contractor and individual independent contractors assigned to work for a host organisation. Collectively we describe both forms as on-hire workers. This terminology allows us to be more descriptive. See below for an example of the descriptive terminology we use in discussions with members, their workers and other stakeholders.

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-hire casual employee</td>
<td>The most common form of on-hire employment</td>
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<tr>
<td>On-hire permanent employee</td>
<td>An employee employed on a permanent basis and on-hired to a client or multiple clients performing an average of 38 ordinary hours per week</td>
</tr>
<tr>
<td>On-hire part-time employee</td>
<td>An employee employed on a permanent basis and on-hired to a client or multiple clients performing an average of less than 38 ordinary hours per week</td>
</tr>
<tr>
<td>On-hire maximum-term employee</td>
<td>An employee employed on a permanent basis for a specified term yet, with the capacity of the employer to end the employment earlier with notice in accordance with the relevant legal instrument.</td>
</tr>
<tr>
<td>On-hire contractor (individual)</td>
<td>An individual independent contractor engaged as an individual (sole trader) independent contractor. Under Australian taxation law the hirer (engaging firm) is required to withhold PAYG Withholding tax and submit it to the ATO.</td>
</tr>
<tr>
<td>On-hire contractor (incorporated)</td>
<td>An individual independent contractor engaged as an employee of a company which is typically controlled by the same individual as a sole or joint Director. There are examples where the individual will be an employee of a larger, multiple employee, company where the company nominates a key person for the completion of the work on assignment.</td>
</tr>
<tr>
<td>On-hire worker</td>
<td>A general term used to describe either an on-hire employee or contractor.</td>
</tr>
<tr>
<td>Host organisation</td>
<td>The client receiving the on-hire worker service which is also responsible for providing general guidance, instruction and supervision to the on-hire worker/s.</td>
</tr>
</tbody>
</table>

RCSA submits that the absence of precise and consistent terminology in the employment services industry is contributing to confusion, especially when we examine exploitation of vulnerable workers by labour contractors within high risk sectors.

RCSA has been instrumental in developing and promoting modern terminology and categories of service with a view to improving the capacity of all stakeholders to have an informed and constructive discussion on the special responsibility and contribution of the on-hire worker service provider within Australia.

RCSA submits that a proper examination of the employment services sector must be more precise and requires an unambiguous understanding of the services provided and the providers, particularly in relation to on-hire worker services and contracting.
The following definitions and categories of service were developed by RCSA to promote a better informed marketplace and a more precise description of on-hire employment services. They can also be found at RCSA Definitions and Categories of Service.
Understanding the Difference between On-Hire Services and Contracting Services

Despite its misuse ‘labour hire’ in its pure form, is a simple concept which is characterised by individual workers being employed or, in the case of individual independent contractors, engaged by an on-hire firm and then assigned, or on-hired, to a client controlled workplace to perform work on an hour-by-hour basis under that client’s general management and instruction.

In return for the on-hire of a worker on an hourly basis the on-hire firm receives a fee from the client which is based upon the number of hours the worker works on assignment for the client or, in the case of on-hire permanent employees, the number of days or weeks worked. The fee structure is typically inclusive of the following components:

a) an hourly or weekly wage rate;

b) allowances, penalties and loadings from an industrial instrument (where applicable);

c) superannuation;

d) a workers compensation premium loading based upon the relevant insurance premium percentage established by the relevant insurer in that State or Territory;

e) payroll tax;

f) a general insurance loading (in some cases); and

g) margin (to cover operating expenses and profit).

In an on-hire arrangement the client, or service recipient, is commonly described as the ‘host’ because the client takes responsibility for supervising and directing the on-hire employee much as they would their own directly hired employees. The use of the term ‘host’, rather than ‘principal’, as commonly used in typical contracting services, provides a key insight into the difference between an “on-hire” arrangement and typical forms of “contracting”.

In an on-hire arrangement the client takes on significantly more responsibility for an on-hire worker given the worker is, in effect, on loan to the client and is not presented in a way where the contractor is responsible for supervising, instructing and directing the performance of the labour and the contracted outcomes. In an on-hire arrangement a worker is on-hired without additional integrated services, property or special know-how. Additional services may be provided to a client however; those services do not fall within the scope of on-hire services, are not integrated with the on-hire services and are effectively ancillary in nature.
The key indicia of a genuine on-hire arrangement are outlined below.

a) A Worker is employed or engaged by the On-hire worker service provider.

b) The On-hire worker service provider pays the Worker and is responsible for paying work-related costs, fees and charges such as wages, penalties, allowances, public holiday payments, leave payments, workers compensation insurance, superannuation, payroll tax (where applicable) and portable leave entitlements (where applicable).

c) The Worker is assigned to a client, which is otherwise known as a ‘host’ (Client/Host), and performs personal labour services (the work) for the host employer on an hour-by-hour basis or, in select circumstances, for a specified term.

d) The Worker performs the work under the general guidance and instruction of the client or a representative of the client.

e) The On-hire worker service provider does not directly supervise, instruct nor direct the Worker on an hour-to-hour or day-to-day basis.

f) In select circumstances, the On-hire worker service provider may, at the request of the Client/Host also assign a team leader on an on-hire basis and that team leader may lead the Worker in relation to defined scopes of work. In circumstances where a team leader is also assigned to a Client/Host that team leader will be directly supervised, instructed and directed by the Client/Host or a representative of the Client/Host.

g) The On-hire worker service provider does not provide plant, equipment or other work related materials with the Worker, other than personal protective equipment or, in circumstances where the Worker is a tradesperson, worker-owned trade tools. The On-hire worker service provider may provide other services to the Client/Host however, those services are ancillary or complementary in nature rather than being an inherent component of an “on-hire” service.

h) Rosters for the performance of work are typically prepared by the Client/Host and communicated to the Worker and On-hire worker service provider.

i) The Client/Host will typically maintain the discretion as to whether additional ‘labour’ is required.

j) The On-hire worker service provider does not provide systems of work, management systems, intellectual property, work planning, other non-labour services or property to the Client/Host as an inherent component of the service.

k) The contract between the Client/Host and the On-hire worker service provider provides for the payment of services on the basis of an hourly fee attributable to the performance of work by each Worker assigned to work for the Client/Host on an hourly basis. This may, in select circumstances, extend to weekly fee payment arrangements.
l) The contract between the Client/Host and the On-hire worker service provider would rarely include commercial terms whereby the On-hire worker service provider’s fee is contingent upon the completion of a scope of work or delivery of a result.

m) In recognition of the labour-only, and unsupervised, nature of the services, the contract between the Client/Host employer and the On-hire worker service provider typically indemnifies the On-hire worker service provider against liability for the inadequate performance of work by the Worker on assignment.

**Contracting Services in Contrast**

The key element of Contracting Services, in contrast to on-hire employee services, is that the service provider receives a fee for completing ‘a defined scope of work’. This fee is commonly a lump sum or fixed fee, rather than an hourly fee. Implied in this is the commercial risk associated with the completion of that scope of work. Unlike on-hire employee services, where the on-hire worker service provider typically receives a fee based on each hour that an on-hire employee performs work for the client/host on assignment, a Contracting Service Provider payment is conditional upon the completion of scopes of work.
On-hire Charge Rates Unpacked

There are a lot of misconceptions surrounding the calculation of a client charge rate when it comes to the provision of on-hire worker services. Whilst recruitment and on-hire firms are in business and therefore seek to make a fair profit from the services they offer, it is helpful to unpack the typical charge rate to better understand what goes in to the mark-up of the workers hourly rate of pay.

RCSA is aware of a lot of misunderstanding amongst industries when it comes to the formulation of charge rates. Many SME clients do not understand the true cost of employment and perceive that on-hire firms are marking wage rates up unreasonably. This is far from the truth.

When you unpack an on-hire worker charge rate the profit margin is typically a relatively small component of the total, especially when you take operating expenses out of the gross margin.

Important Considerations – Setting Charge Rates

- Most on-hire workers are casual employees, some are permanent employees and others are independent contractors (non-employee).
- Incorporated independent contractors may not be ‘workers’ for superannuation and workers compensation.
- Client charge rate should include all costs unless otherwise specified in the terms of business / client service agreement.
- A mark-up is not the same as a margin. A mark-up is a % increase on the pay rate/fee whilst a margin is the % of the total charge rate that is gross profit.
- Company comparisons are of limited value due to service level and job variations from company to company.
On-hire Worker Services – Making a Key Contribution

RCSA Members, in the provision of on-hire worker services, contribute to productive Australian workplaces and improved working lives. It is essential that this contribution, when professionally offered, by reputable firms, is not restrained by licensing within a contemporary labour market.

The on-hire worker services industry is a significant contributor to the Australian economy.

Research completed by IBIS World in 2014\(^9\) confirms that the on-hire worker services (Temporary Staff Services) industry generates revenues in excess of $19 billion within Australia, more than that of accounting services ($17 billion). When combined with Employment Placement and Recruitment Services ($11 billion)\(^10\) the revenues exceed $30 billion.

The on-hire worker services sector employs over 300,000 employees and generates $19 billion in revenue for the Australian economy.

On the global stage, WEC (World Employment Confederation) reports that 12 million FTE workers find work through an agency (a 5.2% growth since 2015) in an industry that generates $420 billion around the world\(^11\).

Australian’s are adapting to changing economic conditions and social pressures and accept that we have to work differently to how our parents, and earlier generations, worked. It is critical that the ACT and Australian regulatory framework respects and accommodates those social and economic changes. Being locked in to an ideologically constrained framework based on the retention of traditional employment models is no longer a viable option if Australia is to remain progressive and internationally competitive.

RCSA are committed to achieving the right balance between the protection of vulnerable workers and the promotion of a responsive and flexible regulatory framework to ensure Queensland businesses can compete in the national and international market and under changeable economic conditions. However, any regulation must be proportional and targeted.

The core contribution of on-hire worker services

1. On-hire worker services facilitate an efficient allocation of labour and management by sourcing, matching, assigning and supporting the best individuals for the job at hand within the most effective engagement model for both worker and hirer.

2. As labour market intermediaries, on-hire worker services facilitate the free flow of information between business and workers to ensure they are able to make quick and informed work and business decisions.

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\(^9\) IBISWorld, Temporary Staff Services Market Research Report | ANZSIC N7212 | Nov 2014


3. As specialist employment outsource service providers, on-hire worker services allow Australian business and government, large and small, to reduce undue administrative and compliance costs to allow them to focus on core business.

4. On-hire worker services enable adaptation to change in increasingly volatile and complex labour markets by more rapidly and effectively matching labour supply with labour demand following such change.

5. On-hire worker services reduce structural unemployment, by creating new jobs, and frictional unemployment by ensuring a better and faster match between supply and demand in labour markets.

6. On-hire worker services drive down segmentation of labour markets by providing a stepping-stone function that enables individuals to transition from education to work, from unemployment to employment and from job to job.

7. On-hire worker services deliver decent work through a marriage of flexibility and security, whereby disparate direct hire casual and contract work can be pooled through an employment service provider to become a permanent or semi-permanent engagement.

It is essential that the ACT Government, policy makers and stakeholders alike understand how on-hire worker services operate in practice. It is important to overcome the fear of the non-standard work form and to better understand how the labour market intermediary, when operating professionally, contributes to a better economy and society.

RCSA submits that the ACT government should be examining ways to harness the benefits of genuine professional on-hire worker services rather than restrain them by introducing new forms of negative regulation which will do little to prevent non-compliant behaviour amongst exploitative labour contractors.

We rely upon the following arguments to support our case for the protection and promotion of on-hire worker services within the ACT.
Leading Good Practice in On-hire Worker Services

The RCSA engages in a significant amount of professional development and business compliance education and training for members. In addition to the maintenance of standards via the RCSA Code, both current and proposed StaffSure Certification for Workforce Services providers and ESI, the RCSA promotes compliance within workplace relations, work health & safety, EEO, privacy, immigration and a host of other legal and good practice disciplines via specifically focused Member Working Groups and our Professional Development function.

RCSA have Working Groups dedicated to the following:

- Workplace Relations
- Safety and Risk
- Immigration
- Independent Contracting
- Taxation

RCSA also work closely with the following organisations to promote greater education and compliance.

- The Fair Work Ombudsman
- WorkSafe ACT
- Human Rights ACT
- Australian Competition and Consumer Commission
- Australian Taxation Office
- The Tax Practitioners Board
- Office of the Australian Information Commissioner
- Workplace Gender Equality Agency

RCSA has been instrumental in promoting the development of guidance and tools to support both employers of on-hire workers and host organisations to meet their, often, joint legal obligations. Some examples of how RCSA has inspired an improved understanding of on-hire work and the associated obligations can be found here. Click on the link to be taken to the document or relevant web-page.

- Questions to ask a Recruitment or On-hire Firm Prior to Engaging their Services (RCSA Guide)
  This document was prepared by RCSA to guide clients and prospective users of on-hire worker services to differentiate between a reputable and compliant firm and non-compliant labour contractors.

- Placing Workers in Safe Workplaces (WorkSafe Victoria Guide)
  RCSA developed this guide in conjunction with the South Australian regulator and then promoted its adoption by WorkSafe Victoria. It provides a comprehensive outline of the obligations of an on-hire firm and host under WHS legislation and a range of tools to fulfil those obligations.

- Understanding On-hire Employee Services – A Guide for On-hire Businesses and Host Organisations (FWO Guide)
  This document was prepared by RCSA and the FWO following an approach from RCSA to increase the awareness of host organisations’ obligations under the Fair Work Act when engaging on-hire worker
service firms. A number of prospective and existing clients were pursuing service terms which were unsustainable when considered against the Fair Work Act.

- **Workforce Info Line (RCSA compliance advisory telephone service)**
  This telephone advisory service to corporate members of RCSA was launched in 2013 and replaced the previous email based service. It was launched in response to the need for industry specific guidance on workplace relations, WHS, EEO and independent contractor compliance within Australia and has been a huge success.

- **Industry specific compliance and workforce management training**
  Given the unique, triangular, employment relationship between employer, on-hire worker and host/client it has been necessary to establish a suite of specific training courses which can be customised to the particular needs of RCSA members and non-members operating in the on-hire industry. These courses cover everything from workplace relations and WHS to complaint resolution and setting client charge rates correctly.

**StaffSure Certification for Workforce Services Providers**

The Recruitment & Consulting Services Association (RCSA), as the peak body for the recruitment and workforce services industry, has created a certification program to support the integrity, compliance and professionalism of the industry and, very importantly, provide end-users with a very easy choice between good practice and malpractice.

Certification will give balanced assurance that a Workforce Services Provider is making every effort to operate legally and honestly in its activities and transactions. The program will provide a high level of visibility and transparency for a buyer of workforce, contracting and recruitment services that they are dealing with a reputable and proven provider.

**The program will, if supported by buyers, knock out the exploiters and promote the professionals.**

The Workforce Services Provider Certification program will:

1. undertake a rigorous and transparent independent audit of workforce services providers that are required to achieve and maintain certification through initial and ongoing (biennial) audits;
2. provide a level of assurance for purchasers of workforce services and, those in a service value network, that they are dealing with a reputable and proven workforce services provider;
3. provide a widely available register of *Certified Workforce Services Providers* allowing buyers to make informed choices;
4. be available to all workforce services providers, regardless of RCSA membership; and
5. be paid for by the workforce services providers that seek certification.

The Workforce Services Provider Certification program does NOT:

1. require the buyer of workforce services, or those in their service network, to be audited or certified unless they are carrying on business as a workforce services provider e.g. sourcing labour for a workforce services provider to employ and hire back to them;
2. guarantee every supplier of workforce services is certified, as it is the buyer that gives effect to this program by satisfying themselves that they are using a certified provider; nor
4. replace or supersede the need for *Certified Workforce Service Providers* to meet broader legal obligations.

**How it will work**

1. An independent auditing firm will manage a biennial program of audits aligned to international standards that will provide assurance in the following fields:
2. High risk companies, either identified through the audit process or by the RCSA, will be required to have annual audits until they are confirmed as meeting the certification standard.
3. Certified companies will be listed on an online register of *Certified Workforce Services Providers*.

A copy of the StaffSure Certification Standard is attached for the reference of the Committee. RCSA would welcome the opportunity to further discuss the Certification program and its operation.
Levels of Compliance in On-hire Worker Services

It is common for those that favour traditional working arrangements to oppose on-hire working arrangements. One of the grounds for opposition is the argument that there is a higher degree of non-compliance within Australian work law than within traditional work. RCSA submits that there is little evidence of a higher incidence of non-compliance with labour laws within on-hire and that arguments suggesting otherwise are founded in ideological opposition and protection of a workforce that is easier to organise and recruit for union membership.

Work Health & Safety and Workers Compensation

Levels of work health & safety compliance within the on-hire worker services sector are better than among direct-hire employers with available data available for assessing work health and safety performance in Victoria and Queensland showing:

In Victoria, WorkSafe Victoria data tells us that in a significant number of industries on-hire workers are less likely to have a claim than their direct hire counterparts employed by clients.

In Queensland, WorkCover Queensland recognised the significant improvement in workers compensation performance within the ‘labour hire’ industry.

In October WorkCover Queensland publicly recognised that there had been an 8% reduction in labour hire claims from 2013/14 to 2014/15 and a ‘significant’ 26% reduction since 2010/11.

The Victorian Experience

The following table, supplied by WorkSafe Victoria demonstrates that ‘labour hire employers experience less workers compensation claims per $M of remuneration than non labour-hire.

<table>
<thead>
<tr>
<th></th>
<th>Labour Hire</th>
<th>Non Labour Hire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr11-Mar12</td>
<td>0.20</td>
<td>0.21</td>
</tr>
<tr>
<td>Apr12-Mar13</td>
<td>0.20</td>
<td>0.19</td>
</tr>
<tr>
<td>Apr13-Mar14</td>
<td>0.17</td>
<td>0.18</td>
</tr>
<tr>
<td>Apr14-Mar15</td>
<td>0.17</td>
<td>0.18</td>
</tr>
</tbody>
</table>
The following table, supplied by WorkSafe Victoria, illustrates how ‘labour hire’ employers experience less workers compensation claims per million dollars of remuneration than non-labour hire employers in the manufacturing industry and transport, postal and warehousing industry.

<table>
<thead>
<tr>
<th>Industry</th>
<th>Apr11 - Mar12</th>
<th>Apr12 - Mar13</th>
<th>Apr13 - Mar14</th>
<th>Apr14 - Mar15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Hire</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Manufacturing</td>
<td>0.38</td>
<td>0.41</td>
<td>0.39</td>
<td>0.46</td>
</tr>
<tr>
<td>E Construction</td>
<td>0.33</td>
<td>0.36</td>
<td>0.36</td>
<td>0.30</td>
</tr>
<tr>
<td>F Wholesale Trade</td>
<td>0.30</td>
<td>0.36</td>
<td>0.32</td>
<td>0.33</td>
</tr>
<tr>
<td>I Transport, Postal and Warehousing</td>
<td>0.26</td>
<td>0.24</td>
<td>0.25</td>
<td>0.23</td>
</tr>
<tr>
<td>N Administrative and Support Services</td>
<td>0.59</td>
<td>0.38</td>
<td>0.36</td>
<td>0.32</td>
</tr>
<tr>
<td>Non-Labour Hire</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Manufacturing</td>
<td>0.19</td>
<td>0.20</td>
<td>0.20</td>
<td>0.20</td>
</tr>
<tr>
<td>E Construction</td>
<td>0.21</td>
<td>0.24</td>
<td>0.26</td>
<td>0.28</td>
</tr>
<tr>
<td>F Wholesale Trade</td>
<td>0.16</td>
<td>0.16</td>
<td>0.16</td>
<td>0.16</td>
</tr>
<tr>
<td>I Transport, Postal and Warehousing</td>
<td>0.21</td>
<td>0.21</td>
<td>0.21</td>
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<td>N Administrative and Support Services</td>
<td>0.21</td>
<td>0.21</td>
<td>0.21</td>
<td>0.21</td>
</tr>
</tbody>
</table>

**Workplace Relations**

Whilst statistics on complaints of workers by worker type and industry are not freely available from the Fair Work Ombudsman, the RCSA recently conducted a webinar whereby the Director of Knowledge Solutions was interviewed on the on-hire worker services industry and its levels of compliance.

**The Fair Work Ombudsman has advised the RCSA that there is no evidence of higher levels non-compliance with Awards or the Fair Work Act by on-hire firms.**

If Fair Work Ombudsman compliance campaigns are an indication of non-compliance concerns of the statutory body, the absence of a campaign focussing on the on-hire worker services industry could only be taken as an indirect tick of approval and, at least, dispels the myth that there are higher degrees of demonstrable non-compliance within the on-hire industry. In fact, the only compliance campaign that intersects with the on-hire industry in any great way is the FWO compliance campaign of 2010-2011 which focused on employers covered by the Clerks – Private Sector Award. This campaign focused on “accountancy and recruitment associated businesses as both of these sectors employ clerical staff covered by the Clerks (Private Sector) Award 2010 and importantly influence other businesses”.

**This FWO compliance campaign identified that the labour supply services sector recorded the highest compliance rate with just over 88% of employers found to be compliant, which was higher than accounting services and office administrative services.**

RCSA submits that it is critical to avoid being influenced by ideologically inspired rhetoric in your examination of compliance within the on-hire sectors and, importantly, to separate out labour contracting firms, that make every effort to avoid legal compliance, from reputable on-hire worker service firms that are expert employers and specialists in compliance.
RCSA response to the Inquiry Issues and Themes

RCSA has prepared the following responses to several questions from the Issues Paper.

What experience or evidence can you provide of the following in the ACT: Role of ‘Labour Hire’ companies in supply chains.

The majority of on-hire worker services business operators are professional, reliable and successful. Yet the open market for labour in Australia is being exploited by illegal and unscrupulous labour contractors that place personal gain and profit ahead of the wellbeing of workers and interests of other industry participants.

It is neither fair nor practical to impose responsibilities on a Workforce Services Provider for matters that are beyond the scope of its effective control or influence. As a Multi-Party environment there exists a clear role and liability for the multiple parties involved in the supply of labour in a supply-chain environment. Therefore, to seek to regulate only a Labour Hire company overlooks the role and liability of the multiple parties involved in the supply of labour.

The market for employment services is a national market. It requires a high level of assurance and visibility and transparency so that buyers of workforce, contracting and recruitment services know what and, with whom, they are dealing.

The poor practices of illegal and illegitimate operators are damaging the reputation of users of services and legitimate and professional labour hire firms. The CEOs of Australia’s leading Workforce Services firms unanimously agreed at a CEO Forum in November 2016 that the industry needed to raise the barriers to entry and, to promote and support the highest standards of professionalism and practice through an industry certification program.

Multi-Party Supplier Environments

The Multi-Party nature of the Workforce Services industry is characterised by the key roles that may be played by many different parties - some of whom will be in a business relationship with the On-Hire or Workforce Services Provider and some of whom will not.

Labour market exploitation is a poly-centric problem that properly engages competition & consumer, equal opportunity, privacy, workplace relations, work health & safety, revenue, and immigration regulators; as well as their industry, union, and consumer stakeholders. Labour market exploitation is not localised to any state or territory. It is widely recognised as a global problem that requires coordinated responses.

Today’s market for employment services is complex and includes multiple tiered, outsourcing, or supply chain models, which we describe in What is ‘Labour Hire’? earlier in this submission.

In response to the need for transparency and greater ease for buyers of workforce services to know they are dealing with a professional and reliable provider, the RCSA is finalising a national certification program for Workforce Services Providers, including ‘Labour-Hire’, which has the support of the horticulture and agriculture sectors as well as unions and Government. It addresses six key areas:

a) Fit and Proper Persons Test  
b) Work status and remuneration  
c) Financial assurance
d) Safe Work  
e) Migration  
f) Decent accommodation (as applicable)

The Workforce Services Provider Certification scheme will provide a widely available register of Certified Workforce Services Providers allowing buyers of services in the ACT to make informed choices. Certification is available to all workforce service providers and is paid for by the workforce service providers that seek certification.

Parties, who are in a business relationship with a Workforce Services Provider, and supply key services, are part of its Service Network and can properly be considered to be within its sphere of influence. The Service Network are the people with whom the employment services provider has a contract, arrangement or understanding for the performance of any two of the following Service Network Roles in relation to workers:

<table>
<thead>
<tr>
<th>Sourcing &amp; selection</th>
<th>Management &amp; supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement</td>
<td>Accommodation</td>
</tr>
<tr>
<td>Mobilisation</td>
<td>Payment</td>
</tr>
<tr>
<td>Performance of work (by workers)</td>
<td>Demobilisation</td>
</tr>
</tbody>
</table>

For the purposes of RCSA’s Employment Services Provider Certification program we consider a participant is part of a Service Network if they perform two or more of these roles eg:

a. A labour hire contractor that sources fruit pickers from a hostel and then places those workers to pick fruit for an agreed rate. The labour hire contractor (sourcing & selection, engagement, management & supervision and payment) is part of a Service network, as is the hostel owner (accommodation and sourcing & selection).

b. Or; a hostel owner (accommodation and sourcing & selection) that offers work to backpackers as part of their accommodation services and then organises those backpackers for a labour contractor (engagement, mobilisation, management & supervision, payment) that then places those workers to pick fruit. Both the hostel owner and the labour contractor are part of a Service Network.

c. Or; the labour hire contractor that, at the request of a farmer/host, engages a team of workers on behalf of the farmer (sourcing & selection, engagement) to pick fruit. The labour-hire contractor (engagement, mobilisation, management & supervision, payment) then on-hires those workers back to the farmer for a fee.

The following diagram on page 25 depicts a typical Multi-Party environment within the Workforce Services environment. In particular, it highlights the inability of a “safe zone” constructed around “labour hire licensing” to deter or prevent the exploitation of workers at other points in the labour supply chain or value network, where workers have contact with firms that do not operate within the definitional boundary of “labour-hire”.
Why Single-Point Licensing (or Certification) Doesn’t Work in Multi-Actor Environments

**FARM CLIENT**
- Licences/Certifies workers
- Engages contractors

**CONTRACT MGMT COY**
- Provides on-site management of workforce
- Can be engaged by C; LHF or WFC
- Handles payroll and deducts charges to workers

**W/FORCE CONTRACTOR**
- Assembles workforce to provide harvest services

**LABOUR HIRE FIRM**
- Licences/Certifies workers
- Engages contractors

**LOGISTICS FIRM**
- Mobilises, accommodates, and caters for workforce deployment
- Charges workers
- Can be engaged by C; LHF; WFC; or CMC

**SOURCING FIRM**
- Unregulated Zone—Potential for Exploitation
- Informally refers workers

**HAWKERS SPOTTERS**
- Charges workers and creates debt bondage
- May be offshore

Andrew C. Wood 2016
Duplication should be avoided

Important legislative instruments and regulatory bodies are already in place at a national level: Fair Work Act, Fair Work Ombudsman, Australian Tax Office and the Department of Immigration and Border Protection.

RCSA is very concerned the duplication of these national bodies, with the creation of a state-based regulation for the workforce services or ‘Labour Hire’ industry in the ACT, will discourage the engagement of legitimate and legal Labour Hire services and continue the poor practices of a section, but by no means all, of the industry operating in the ACT.

What experience or evidence is there of exploitation, harassment and other mistreatment of workers employed by labour hire companies.

There is no evidence that there is a greater degree of exploitation, harassment or other mistreatment amongst on-hire workers than direct hire workers. RCSA has actively engaged with the relevant regulators and have been provided no evidence of higher instances of exploitation or mistreatment of workers.

We would encourage the inquiry team to not be distracted by this unsupported proposition and require the organisations making such claims to disclose the evidence they are relying upon in making this presumption.

The workforce services industry is a “high consequence” industry in terms of the way in which poor practice within its operations might directly contribute to exploitation.

‘Clients quite often don’t know or are ignorant to the suppliers illegal trading and employment methods.’ RCSA member, National On-Hire firm based in Queensland.

There is evidence of high instances of poor practices and non-compliance amongst labour contractors within the horticulture and high-risk sectors. Labour contractors are more likely to be used in sectors characterised by seasonal and project work and the lack of sophistication of many buyers of services when it comes to sourcing and managing a large project workforce.

Just as there is evidence of high levels of exploitation and non-compliance among direct employers in a number of other sectors, among them retail, security, IT and hospitality arising from FWO investigations:

- In the case of the fast food and hospitality industries, in which the Fair Work Ombudsman recently found that only 33% of employers were compliant with all of their workplace relations obligations in their recent report: National Hospitality Industry Campaign 2012-15 Takeaway Foods (Wave 3) Report – March 2016
- In the case of two IT companies - Konsulteq Pty Ltd and Konsulteq Upskilling & Training Services Pty Ltd, that the Federal Circuit Court found had underpaid workers in excess of $35,000 and mislead and deliberately misclassified them to avoid their workplace relations responsibilities.

In the case of the Gold Coast security company Step Ahead Security Services Pty Ltd, and owner Owen Ivor Jennings, that allegedly underpaid eight security guards $22,779 between May and August, 2014. Mr Jennings has previously been put on notice of the need to pay minimum lawful entitlements\textsuperscript{14}.

Or, in the case of dozens of hospitality workers in Canberra that were underpaid more than $22,000 by their employers, following investigations by the Fair Work Ombudsman.

15 June: Brisbane Coffee Club franchisee to pay back $18,000 is wages, cash-back payments.

14 June: Massages Parlour underpays workers $12,000.

12 May: Farmer paid no overtime to backpackers.

17 April: Hospitality workers and Horticulture workers assisted to recover unpaid wages from employers.

6 April: United Petroleum panel operators underpaid wages.

27 March: Hospitality workers underpaid and sacked when raised the issue.

16 February: Hospitality workers underpaid and exploited.

**What experience or evidence is there of Labour Hire companies avoiding workplace laws and other statutory obligations.**

RCSA members take very seriously their workplace relations obligations and their obligations to employees and employers alike. All members of the association subscribe to the RCSA Code for Professional Practice (the Code) which is a guide to the conduct by the RCSA to be becoming of a member.

The General Principles of the Code require that members must:

\begin{quote}
act in a manner that is becoming of a Member and, to that end, observe a high standard of ethics, probity and professional conduct which requires not simply compliance with the law; but extends to honesty, equity, integrity, social and corporate responsibility in all dealings and holds up to disclosure and to public scrutiny.
\end{quote}

Principle 4 of the RCSA Code for Professional Practice goes on to specifically require member’s to:

\begin{quote}
...comply with all legal, statutory and government requirements relating to their professional Practice.
\end{quote}

The Code defines Professional Practice as:

\begin{quote}
practice connected with or in the course of providing an Employment Service.
\end{quote}

RCSA produces for members, through its Business Solutions Centre, Workplace Relations Checklists which provide guidance and information to members about the workplace relations obligations applicable to industry sectors and in some cases, specific modern awards.

In addition, RCSA members have access to the Workplace Relations Information line (WIL), an immediate telephone advice and email service, for areas including:

- Workplace relations (Awards, Fair Work and the National Employment Standards, employment agreements/contracts, enterprise agreements, termination of employment and on-hire

assignments, managing performance, conduct and attendance, unfair dismissal, adverse action /
general protection, EEO and anti-discrimination, privacy, developing policies, procedures and
good practice HR management).

- Work health and safety (policies and procedures, management systems, audits and gap analysis,
client safety assessments, managing work safety in client relationships).

- Independent contracting (Contractor v employee, independent contractor agreements and
contracts, minimum entitlements for independent contractors).

During the past 12 months, the WIL service receives 1,500 telephone calls from members seeking advice
and to confirm their workplace relation obligations. The areas of award compliance, award coverage and
wages are the three most frequently requested areas for information.

RCSA members also coordinate extensive ‘on-boarding’ activities for all workers, which address their
workplace relations obligations, as well as undertakings unique to each organisation. On-boarding will
generally include:

- Familiarisation with the Employment Agreement, Terms of Engagement and conditions of
employment
- Work Health and Safety Induction and assessment.
ATTACHMENT 1

RCSA Code for Professional Conduct (Current Code)

1. Definitions

1.1 **Workseeker** – means a person who seeks the services of a Member in order to find work in a direct or on-hired capacity, whether as an employee, independent contractor, officer or otherwise and includes a prospective Workseeker;

1.2 **Client** – means a person, other than a Workseeker, who seeks an Employment Service and includes a prospective Client;

1.3 **Code** – means the Code for Professional Conduct;

1.4 **Conduct Recommendation** – means a recommendation given under the D&DRP by RCSA to a Member with regard to means by which the Member may conform its conduct to the standard becoming of the Member or not prejudicial to the interests of RCSA;

1.5 **Confidential Information** – includes any information that may reasonably be regarded by the person who receives it, or from whom it was obtained, as being information that should not be used or disclosed without the permission of the person from whom it was obtained;

1.6 **Consultant** – mean a person, who is engaged by a Member, whether as an employee, contractor, officer or otherwise, to represent the Member in the market in providing an Employment Service and includes a prospective Consultant;

1.7 **Corporate Membership Category of Service** – means any category of service recognised by the Board of RCSA as being of a type characteristically provided by a Corporate Member and includes an On-Hired Employee Service, a Contracting Service, a Contractor Management Service, a Recruitment Service, and a Workforce Consulting Service as defined in RCSA Corporate Membership Categories of Service as at the date of authorisation of this Code; but does not include a migration service of a type which by law in Australia or New Zealand many only be provided by a registered migration agent;

1.8 **D&DRP** - means the Disciplinary & Dispute Resolution Procedure approved by the Board of RCSA from time to time;

1.9 **Direction** – means a direction given under the D&DRP;

1.10 **Employment Service** – means any category of service recognised by RCSA as a Corporate Membership Category of Service;

1.11 **Industry Improvement Statement** – means a public statement made by the Board of RCSA, from time to time, lawfully for the purposes of any of the objects set out in clause 1.3(a) or 1.3(b) of RCSA’s Constitution and identified as such;

1.12 **Job Owner** – means the enterprise that seeks an Employment Service for the performance of work or the filling of a position;

1.13 **Member** – means a person, who holds any category of Membership of RCSA that is recognised under its Constitution and who has signed, or is required by the Board to sign, a Statement of Commitment; and includes a Professional Member and an applicant for membership;

1.14 **Professional Practice** – means practice connected with or in the course of providing an Employment Service;

1.15 **SDS** – means RCSA’s Service Delivery Standard: RCSA-SDS:2010 as amended from
time to time or any standard adopted by RCSA to supplement or replace it and having the purpose of assisting Members to develop systems and controls to ensure Clients and Workseekers receive excellent service;

1.16 **Service Commitment and Service Charter** – have the respective meaning and usage given to them in the SDS;

1.17 **Staff** – mean persons engaged by a Member in its business to work on the Member’s behalf in providing or supporting the provision of an Employment Service and includes a Consultant;

1.18 **Statement of Commitment** – means a statement of commitment to abide by the Code and the D&DRP, which may be in the form approved by the Board of RCSA from time to time;

1.19 **Transition Dealings** – means dealings for the transition of on-hired Workseekers from their Employment Service supplier in response to a Client’s requirements.

2. **Interpretation**

2.1 The Code is a guide to conduct that is considered by RCSA to be becoming of a Member and not prejudicial to the interests of RCSA.

2.2 The Schedules of the Code form part of the Code.

2.3 Neither the Schedules nor the eight Specific Principles stated in the Code limit or derogate from the General Principles.

2.4 The Schedules and the eight Specific Principles stated in the Code operate in addition to, and in support of, the General Principles; but are limited in the application to conduct in the course of or connection with a Member’s Professional Practice.

2.5 This Code stands as the Code for Professional Conduct wherever that expression is used in the Constitution.

2.6 Acceptance by RCSA of a Member’s Statement of Commitment shall create a binding and enforceable contract between:
   a) Members and RCSA; and
   b) Between Members effective upon the Member’s applying for, obtaining or retaining Membership after its terms have been notified to the Member at the address for notices last noted in RCSA’s records, that the Member, guided by this Code, will conform his, her or its conduct to a standard that is becoming of a Member and so as not to prejudice the interests of RCSA.

2.7 In interpreting the requirements of this Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA, RCSA, including any person appointed by RCSA to exercise a function under the D&DRP, may have regard to:
   a) The provision of the SDS:
   b) The provisions of any current Industry Improvement Statement issued by RCSA; and
   c) The provisions of any relevant Conduct Recommendation given by RCSA to the Member.
General Principles

1. Members must act in a manner that is becoming of a Member and, to that end, observe a high standard of ethics, probity and professional conduct which requires not simply compliance with the law; but extends to honesty, equity, integrity, social and corporate responsibility in all dealings and holds up to disclosure and to public scrutiny.

2. Members must not engage in any form of conduct that is prejudicial to the interests of the RCSA.

3. Members must, except where they can satisfy RCSA that they have fair and lawful excuse, co-operate with any investigation by RCSA of Member conduct and comply with any Direction or Conduct Recommendation given with regard to the Member’s conduct or grievance arising from the Member’s conduct.

Specific Principles

Principle 1 – Confidentiality and Privacy

1. Members must take reasonable steps to maintain the confidentiality and privacy of information obtained in the course of their professional practice.

2. Members must take reasonable and timely steps to ascertain the extent to which any information they collect may be confidential.

Principle 2 – Honest Representation

1. Members must not knowingly:
   a) make a false statement of material fact;
   b) fail to disclose a material fact;
   c) make a representation as to future matters without having reasonable grounds for making it.

2. Members who place job advertisements must take care that the advertisements accurately describe what, if any, jobs are available and that all information about a job given before or at an interview with Workseekers is accurate and not misleading.

3. Members must not advertise jobs unless:
   a) they have clear permission from the Job Owner to recruit for the job; and
   b) they have taken reasonable steps to satisfy themselves that the job is genuine,

4. Members must not present a Workseeker for jobs unless they have clear permission from the Workseeker, given with respect to the job for which the Workseeker is presented.

5. Members must not claim that they have a right to represent a Workseeker to a Client unless they have permission from both the Workseeker and the Client given, in both cases, with respect to the job for which the Workseeker is represented.

Principle 3 – Work Relationships

1. Members must not undertake actions that would be likely to unfairly or unlawfully jeopardise a Workseeker’s engagements to perform work.

2. Members must not undertake actions that would be likely to unfairly or unlawfully interfere in work relationships established by others.

3. Members must not attempt unfairly or unlawfully to prevent a Workseeker from seeking work from other sources.

4. Members must act lawfully and fairly in respect of their involvement in Transition
Principle 4 – Legal Compliance

1. Members must comply with all legal, statutory and government requirements relating to their Professional Practice.
2. Members will not engage in any form of unlawful collusive practices.
3. Members shall take reasonable steps to ensure, so far as practicable, that all new employees, Contractors, Consultants, and Workseekers honour their lawful obligations to the previous employers and principals.

Principle 5 – Safety & Security

1. Members must act diligently in assessing and responding to all safety and security risks for which they are statutorily responsible.
2. Without limitation to the scope of their statutory responsibilities, Members must inform Workseekers, Clients, Consultants and Staff, or Member of the public of any significant safety or security risk to which they may be exposed.

Principle 6 – Certainty of Engagement

1. Members must take reasonable steps to ensure the certainty and scope of their engagement:
   a) By a Client to provide an Employment Service – including but not limited to such matters as:
      i. content of any Service Commitment or Service Charter offered in connection with the provision of the Employment Service;
      ii. description of the specific service/s to be provided;
      iii. deliverable or outcomes, including proposed dates and delivery times;
      iv. fees and charges of the agreed services, including any temp-to-perm; contractor-to-perm; agency switching fee or similar fee arrangement;
      v. outline of the client and Workseeker relationship management process;
      vi. commitment to rapid and fair resolution of customer complaints or issues;
      vii. explanation of any service guarantee and claims processing;
      viii. description of any position required to be filled including the inherent requirements of the position and the extent to which the Client offers to make reasonable adjustments to avoid unlawful discrimination and meet Equal Employment Opportunity responsibilities;
      ix. any particular purpose for which the Employment Service is being required;
      x. any reference, background, or suitability check required by the Client to be performed in respect of the position;
      xi. disclosure of Client identity;
      xii. disclosure of Workseeker information, assessment or valuation.
   b) By a Workseeker – extending to agreement regarding all matters relevant to the Member’s representation of the Workseeker including:
      i. Details of work conditions, the nature of the work to be undertaken, rates of pay and pay arrangements;
      ii. The obtaining of any necessary consents, approvals, or permissions.
required from the Workseeker;

iii. The nature of any restraint imposed, directly or indirectly, upon the Workseeker with respect to the Workseeker obtaining further work.

**Principle 7 - Professional Knowledge**

1. Members must work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge and, where required by RCSA’s By-Laws, maintain a Continuing Professional Development program to the level prescribed by the RCSA Levels and Criteria of Professional Membership issued from time to time.

2. Members must ensure that their Staff are adequately trained and skilled to undertake their responsibilities.

**Principle 8 – Good Order**

1. A Member must bring to the attention of the RCSA at the earliest possible time any material concern, which the Member has regarding the Member’s or another Member’s conduct in Professional Practice.

2. Concerns regarding Member’s conduct in Professional Practice must be referred to the RCSA Ethics Registrar to be dealt with in accordance with the D&DRP.

3. Members are encouraged to use processes of counselling (as may be directed in accordance with the D&DRP), negotiation, expert appraisal, mediation and arbitration in order to resolve disputes and must endeavour to do so wherever practicable.
Schedule 1 of RCSA Code for Professional Practice


1. Members should be aware and acknowledge that in an open and competitive market place, circumstances may arise when a Client wishes to change Employment Service suppliers.

2. Members should also be aware and acknowledge that Members invest significant amount of work, money, time and intellectual resources in establishing relationships with Clients, developing critical understandings of Clients’ and Workseekers’ needs, training Workseekers in systems of work for Clients, and inducting Workseekers in preparation to undertake work for Clients’. Those investments contribute to Members’ goodwill and support significant business capital, which is of value to Members and which Members are entitled to protect by lawful means.

3. This Guideline and Recommendation will apply in cases where a Member seeks to transition on-hired Workseekers from their Employment Service supplier in response to Client requirements.

4. Stakeholders in the transition arrangements may include Member or other Employment Service suppliers involved in the transition, the Client, the Client’s customers and the on-hired Workseekers themselves.

5. Unless there are compelling reasons to the contrary, Members should give written notice to the incumbent Employer Service supplier if they require to effect a transition of on-hired Workseekers from that supplier in response to Client requirements (a “transition request”).

6. In making transition arrangements, Members must give due consideration to the interest of all stakeholders.

7. Members must use reasonable endeavours to ensure that transition arrangements are managed in a professional manner and they are designed to minimise disruption to stakeholders. To that end RCSA recommends that Members ought to give consideration to and make suitable arrangements:

   a) for the orderly continuation of business;
   b) to identify and give effect to any relevant contractual or other legal obligations;
   c) for the orderly transition of workers. This will usually require that the incumbent Employment Service supplier be permitted to be first to inform its Workseekers of the circumstances that have led to the transition request. The incumbent Employment Service supplier should notify its Workseekers promptly upon receipt of a transition request of circumstances that may be like to result in change, termination or redundancy in the workplace;
   d) whilst RCSA does not make any recommendation as to the timeframe within which a transition is to be completed as circumstances will differ from case to case, Members must conduct their Transition Dealings promptly in accordance with good commercial and industrial practice;
   e) to ensure that Workseekers are properly informed of matters relevant to their decision to the transition or not to transition;

8. Code Principles 1 (Confidentiality and Privacy), 2 (Honest Representation), 4 (Legal Compliance), 5 (Safety & Security), 6 (Certainty of Engagement) and 8 (Good Order) will also be relevant to transition arrangements and Members should give due regard to the requirements of those principles as they apply to their transition arrangements.
Client raises the **possibility** that he/she will require a transition

Member advises regarding Code for Professional Conduct

Client confirms to New Supplier that transition request is to be made

Yes

- Transition Request is given by other appropriate route – e.g. via client
- RCSA advises New Supplier to give Request to Incumbent & also advises New Supplier to confirm request has been given before acting

No

- New Supplier gives Transition Request to Incumbent (Transition Letter)

Are there any compelling reasons that warrant departure from requirement that New Supplier notify incumbent of transition request?

Yes

- Identify relevant contractual and other legal obligations
- Undertake a risk assessment of client’s site

No

- Make and record transition arrangements for orderly continuation of business

Implement transition arrangements
Attachment 2

Program Standard for RCSA StaffSure Certification for Workforce Services Providers

RCSA StaffSure
A single point of trust for buyers and users of workforce services

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Attachment 3

Adapting to Change – The Boston Consulting Group

How private employment services facilitate adaptation to change, better labour markets and decent work

Refer to separate file attachment which contains the following report
ATTACHMENT 3


Refer to separate file attachment.

\(^1\) Ibis World reports N7211 *Employment Placement & Recruitment Services in Australia (2016)* and N7212 *Temporary Staff Services in Australia (2016)*

\(^2\) RCSA benchmarked estimates (2016) based on Ibis World and ABS data and cross matched to member experience
RCSA StaffSure

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Workforce Services Provider Certification

An open marketplace for workforce services in Australia is being exploited by illegal and unscrupulous labour contractors that place personal gain and profit ahead of the wellbeing of workers and the interests of other industry participants. These poor practices are damaging the reputation of buyers of these services and professional workforce services firms.

The Recruitment & Consulting Services Association (RCSA), as the peak body for the recruitment and workforce services industry, has created a certification program to support the integrity, compliance and professionalism of the industry and, very importantly, provide end-users with a very easy choice between good practice and malpractice.

Certification will give balanced assurance that a Workforce Services Provider is making every effort to operate legally and honestly in its activities and transactions. The program will provide a high level of visibility and transparency for a buyer of workforce, contracting and recruitment services that they are dealing with a reputable and proven provider.

**The program will, if supported by buyers, knock out the exploiters and promote the professionals.**

The Workforce Services Provider Certification program will:

1. undertake a rigorous and transparent independent audit of workforce services providers that are required to achieve and maintain certification through initial and ongoing (biennial) audits;
2. provide a level of assurance for purchasers of workforce services and, those in a service value network, that they are dealing with a reputable and proven workforce services provider;
3. provide a widely available register of **Certified Workforce Services Providers** allowing buyers to make informed choices;
4. be available to all workforce services providers, regardless of RCSA membership; and
5. be paid for by the workforce services providers that seek certification.

The Workforce Services Provider Certification program does **NOT:**

1. require the buyer of workforce services, or those in their service network, to be audited or certified unless they are carrying on business as a workforce services provider e.g. sourcing labour for a workforce services provider to employ and hire back to them;
2. guarantee every supplier of workforce services is certified, as it is the buyer that gives effect to this program by satisfying themselves that they are using a certified provider; nor
3. replace or supersede the need for **Certified Workforce Service Providers** to meet broader legal obligations.

**How it will work**

1. An independent auditing firm will manage a biennial program of audits aligned to international standards that will provide assurance in the following fields:

   - Fit & Proper Persons Running the Business
   - Correct Work Status & Remuneration
   - Financial Assurance to Operate the Business
   - Safe Work
   - Immigration Compliance
   - Decent Accommodation for Workers

2. High risk companies, either identified through the audit process or by the RCSA, will be required to have annual audits until they are confirmed as meeting the certification standard.

3. Certified companies will be listed on an online register of **Certified Workforce Services Providers.**
RCSA Workforce Services Provider Certification Standard

1. PURPOSE

The purpose of Certification is to provide a measure of assurance, within an acceptable degree of residual risk, that a Certified Workforce Services Provider is reputable and will seek to meet its compliance obligations in accordance with this RCSA Workforce Services Provider Standard.

2. APPROACH

2.1 Systems Approach

It is neither fair nor practical to apply a certification requirement only to one party (e.g. a labour hire firm) in a multi-party environment. That is because key roles may be played by many different parties - some of whom will be in a business relationship with the Certified Workforce Services Provider and some of whom will not. The diagram at Appendix 1 depicts why this is so using the example of a hypothetical workforce services supply to a farm client.

Neither is it fair or practical to impose responsibilities on an agency for matters that are beyond the scope of its effective control or influence.

Parties, who are in a business relationship with a Certified Workforce Services Provider and supply key services, are part of its Service Network and can properly be considered to be within its sphere of influence. For example, an agency can choose not to deal with a recalcitrant or uncooperative party; or it can (and should) withhold services in order to meet its responsibilities and duties of care.

The RCSA Workforce Services Provider Standard therefore adopts a systems approach that focuses on a Certified Workforce Services Provider’s stewardship of its Service Network as a primary means of enhancing labour supply chain governance.

For the purposes of the RCSA Services Provider Standard, we treat a Service Network as the set of contracts, arrangements or understandings for the performance of any two or more of the following Service Network Roles in relation to workers:

- sourcing/selection
- engagement
- mobilisation
- performance of work (by workers)
- management & supervision
- accommodation
- payment
- demobilisation

(Service Network roles).

Service Network participants are the persons with whom the Certified Workforce Services Provider has a contract, arrangement or understanding for the performance of any of the Service Network roles necessary for it to fulfil its purpose and that can be controlled or influenced by the Workforce Services Provider’s owners or managers.

NOTE: Control or influence might be exercised through the provisions of a contract or terms of business. It might simply consist of a power to refuse to do business with a recalcitrant or unco-operative participant or to suspend the supply of services to such a participant.
2.2 Workforce Services Providers

A Workforce Services Provider includes any of the following services, other than government contracted workforce services:

- Workforce contracting services:
- Contract management services;
- On-hire services;
- Placement services.

Note: Definitions of each of the above categories of Workforce Services Providers are contained in the Key Terms (Part 6)

2.3 Accountability through Certification

The RCSA Workforce Services Provider Standard is not intended, by itself, to impose or relax legal obligations.

A certified Workforce Services Provider remains responsible to meet all its compliance obligations and duties in accordance with law.

Certification is an additional means of holding a Certified Workforce Services Provider accountable, through its certification, to the RCSA Workforce Services Standard.

Apart from whatever legal liabilities might otherwise be incurred, the main consequence of a Certified Workforce Services Provider's failure to satisfy the RCSA Workforce Services Standard is that certification may be lost, suspended, or downgraded; or that the agency may be required to undertake corrective action in order to maintain its certification.

2.3 Co-ordination

RCSA may appoint a co-ordinating council to monitor and make recommendations to RCSA about the effectiveness of the RCSA Workforce Services Standard and may confer upon the co-ordinating council, as a condition of a workforce service provider’s participation in the certification programme, permission to refer any matters of concern arising in connection with certification to a proper authority.

2.4 Transparency & Reporting

If an auditor has reasonable grounds to believe that a person may be at serious and imminent risk of exploitation, the auditor may report those grounds to a proper authority.

2.5 Six Key Areas

Certification covers six key areas:

- fit & proper person
- work status & remuneration
- financial assurance
- safe work
- migration
- suitable accommodation.
2.6 Audit Questionnaire & Assessment

The implementation of the RCSA Workforce Services Standard is supported by a detailed audit questionnaire and assessment techniques that may include random access and interview – e.g. of workers, customers and service network participants.

3. ABOUT CERTIFICATION

3.1 RCSA Certification

Certification under this standard means that a Workforce Services Provider has been assessed against the RCSA Workforce Services Standard.

Certification under this standard is not a guarantee of regulatory compliance. It is not a substitute for more rigorous compliance or due diligence audits.

Certification under this standard is not a guarantee that a Certified Workforce Services Provider will provide services that you may want or that its services will meet the specifications that you establish, or that are established by consumer laws.

Agreement about the scope of services to be supplied, their standard, and about procedures for monitoring performance is always a matter for the parties themselves.

Certification is never a substitute for clear agreements and effective contract management.

3.2 Who Can be Certified

Any Workforce Services Provider lawfully carrying on business for the supply of Workforce Services can apply to be certified against the RCSA Workforce Services Standard.

A Tied Workforce Services Provider may be exempted from a certification requirement established in support of this standard.

3.3 Different Certifications

Agencies may hold different certifications – e.g. certification under RCSA’s Service Delivery Standard or the equivalent standard of another industry association or under ISO 9001.

3.3.1 RCSA Certification

Certification under this standard indicates that the agency has controls in place to meet the RCSA Workforce Services Standard and that the controls are:

- evidence based
- suitably documented
- regularly monitored
- providing feedback to support corrective action
- transparent
- supported by appropriate training and resources.

4. Guiding Principles

Guiding Principles are objectives towards which the controls are directed. They are statements of what a reputable and well-governed Certified Workforce Services Provider does and how it operates.

Corrective action should be directed ensuring that the Guiding Principles are satisfied.
4.1 Ascertain & Assure
A Certified Workforce Services Provider applies resources to ascertain to a **reasonable standard of confidence** the regulatory environment that governs its Service Network.

A Certified Workforce Services Provider has controls to assure to a reasonable standard of confidence that requirements of the regulatory environment that governs its Service Network are met.

4.2 Accountability
A Certified Workforce Services Provider is accountable, through its certification, for assuring to a reasonable standard of confidence that its Service Network participants meet the requirements their regulatory environment.

4.3 Corrective Action
A Certified Workforce Services Provider takes reasonable corrective action to address any failure to meet this standard or the requirements of the regulatory environment that governs its Service Network.

**Note:** Corrective action may include withholding or refusing supply of services.

4.4 Fit & Proper Person (Lawful Supply)
A Certified Workforce Services Provider has adequate controls to assure to a reasonable standard of confidence that it and its Service Network participants are lawfully able to supply services in the jurisdiction, where the services are to be supplied.

4.5 Fit & Proper Person (Tackling Exploitation)
A Certified Workforce Services Provider applies resources and exerts influence to assure to a reasonable standard of confidence that it is not likely to be implicated in unlawful exploitation of workers either directly or through its Service Network.

4.6 Work Status & Remuneration (Influence)
A Certified Workforce Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network:

- are classified and remunerated correctly; and
- have access to important information about the work they are to perform and the arrangements under which they are to perform it.

4.7 Financial Influence
A Certified Workforce Services Provider plans and applies resources and exerts influence to assure, to a reasonable standard of confidence, the **financial stability** of its Service Network.

4.8 Safe Work
A Certified Workforce Services Provider plans, applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network have a safe work environment.
4.9 Migration

A Certified Workforce Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy.

4.10 Suitable Accommodation

A Certified Workforce Services Provider, where required, applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network are suitably accommodated.

5. CONTROLS & CRITERIA

The RCSA Workforce Services Provider Standard draws on the concept of a control as it is developed in the field of control assurance and references HB 254, 3 ed 2005 Governance, Risk Management & Control Assurance.

Controls are the means by which an organisation assures that its intent is being implemented, through internal and external audit for financial matters, employment policies and all areas in which the organisation interacts with the public.

The meaning of control is broader than internal financial control and is expanded to include all planning and strategies put in place to support the RCSA Workforce Services Standard. It would include policies, procedures and practices. Transparency and probity are also part of this control environment. (HB 254 3 ed (2005)).

Criteria are developed across six key areas (fit & proper person; work status & remuneration; financial assurance; safe work; migration; and worker accommodation). They are stated in the form of questions, each of which may be answered descriptively and by reference to the RCSA Workforce Services Provider Standard requirements namely that such controls developed in respect of the criteria should be:

- evidence based
- suitably documented
- regularly monitored
- providing feedback to support corrective action
- transparent
- supported by appropriate training and resources.

5.1 Fit & Proper Person

5.1.1 Commitment

Has the agency published a policy approved by its owners/managers about how it ensures that:

- its Service Network participants are fit and proper persons to undertake the roles assigned to them?
- workers in its Service Network are free from unlawful exploitation?

5.1.2 Ascertain & Assure

Does the agency have controls to ensure, to a reasonable standard of confidence, that:

- its Service Network participants are fit and proper persons to undertake the roles assigned to them?
- workers in its Service Network are free from unlawful exploitation?
5.1.3 Role Clarity

Does the agency have controls to ensure, to a reasonable standard of confidence, that customers, workers suppliers and members of the public who have dealings with the agency are sufficiently informed about the role of the agency and the type of workforce services it provides?

5.1.4 Legal Entity

5.1.4.1 Establishment

*Sole Trader*

Does the sole trader have:
- appropriate work rights?
- an official business number that matches its supply terms?
- GST registration?

*Partnership*

- Is the partnership agreement in evidence and current?
- Does the partnership agreement permit carrying on of relevant business in the jurisdiction where services are supplied?
- Do all partners have appropriate work rights according to applicable national or state law?
- Does the partnership have an official business number that matches its supply terms?
- Is the partnership registered for GST?

*Corporation*

- Is the corporation registered?
- Are its returns and reports current?
- Does the corporation have an official business number or official registered business number that matches its supply terms?
- Is the corporation registered for GST?
- Does the corporation’s constitution permit carrying on of relevant business in the jurisdiction where services are supplied?

**NOTE**: Pay special regard to any limitations on the ability of incorporated associations to carry on business.

*Other*

There may be a range of other entities and business models that will be encountered. These may include co-operatives, limited partnerships, various forms of joint venture, and franchises.

In any such case, refer to advisors.

5.1.4.2 Accessibility

- Does the agency have reliably accessible business premises or virtual premises?

  **NOTE**: Accessibility extends to language and disability access.

- Does the agency provide reliable means of contacting a responsible owner/manager or consultant during working hours, as well as outside working hours in case of emergency?

5.1.4.3 Licence

- Is the agency suitably licensed to carry on relevant business in the jurisdiction where services are supplied and not otherwise disqualified from doing so?
- Any there any conditions attaching to carrying on relevant business?
• Are conditions attaching to carrying on business are being complied with?
• Are conditions attaching to carrying on business suitable transparent?
• Is the agency under expulsion or suspension restriction from applying for membership by RCSA or similar industry association?

5.1.5 Owners/Managers

Disqualification
• Are all owners or managers, who are actively participating in the business, free of any circumstance of disqualification?

Professional Knowledge
• Do all owners or managers, who are actively participating in the business have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

5.1.6 Consultants

Disqualification
• Are all consultants free of any circumstance of disqualification?

Professional Knowledge
• Do all consultants have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

5.1.7 Customer/Worker Facing Administrative Staff

Disqualification
• Are all customer or worker facing administrative staff free of any circumstance of disqualification?

Professional Knowledge
• Do all customer or worker facing administrative staff have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

5.1.8 Service Network Participants

Disqualification
• Does the agency have controls to assure to a reasonable standard of confidence that its Service Network participants are free of any circumstances of disqualification with regard to their legal entities, owners/managers, consultants, or customer/worker-facing administrative staff?

5.2 Work Status & Remuneration

5.2.1 Commitment
• Has the agency published a policy, approved by its owners/managers, about ensuring that workers in its Service Network:
  ✓ are classified and remunerated correctly; and
  ✓ have access to important information about the work they are to perform and the arrangement under which they are to perform it?

5.2.2 Ascertain & Assure
• Does the agency ascertain the regulatory environment that governs the work status and remuneration of workers in its Service Network?
• Does the agency have controls to assure that workers in its Service Network are classified and remunerated correctly?

5.2.3 Employment Established in Accordance with Legal Requirements
• Does the agency have controls to assure that employment is established in accordance with all legal requirements?

  Example: Some awards require particular types of work e.g. day labour, casual work or part time work to be established in a particular manner.

5.2.4 Information
• Does the Agency have controls to assure to a reasonable standard of confidence that information about work status and remuneration is readily accessible to workers in its Service Network and includes provision of:
  ✓ any statement required to be given to the worker by law?
  ✓ any contract, collective agreement, or other industrial instrument applicable to the work they perform?
  ✓ a copy of a contract of engagement or summary of terms of engagement in their first language where reasonably available?
  ✓ a copy of applicable workplace policies relating to such matters such as drug & alcohol use and testing; workplace bullying; workplace discrimination and sexual harassment, vilification - given in their first language where reasonably available?
  ✓ information about training that may be available to workers to improve their skills?
  ✓ Information about how workers may contact relevant support agencies for them, which may include representatives of any culturally and linguistically diverse community to which they belong, a trade union, a or a community/ faith based organisation to which they belong or a consumer affairs authority?

5.2.5 Records
• Does the agency have controls to assure to a reasonable standard of confidence that engagers and payers of workers in its Service Network maintain true records of:
  ✓ time and wages
  ✓ leave accruals
  ✓ worker authorised deductions from pay including the due application of such deductions
  ✓ tax and superannuation and tax to be remitted
  ✓ back charges, rectification costs and liquidated damages claimed against independently contracting workers
  ✓ any other deductions from pay or charge made against the worker.

5.2.6 Standard Form Contracts (Independent Contractors)
• Does the agency have controls to assure to a reasonable standard of confidence that workers in its Service Network engaged as independent contractors under standard form small business contracts are engaged under terms that are not void for unfairness or otherwise harsh or unfair?
5.2.7 Volunteers, Interns, Trainees and Supported Wages

- Does the agency have controls to assure to a reasonable standard of confidence that workers in its Service Network engaged as volunteers, interns, trainees or under disability or supported wage arrangements are engaged and remunerated consistently with the lawful requirements of such arrangements?

5.3 Financial Assurance

5.3.1 Commitment

- Has the agency published a policy, approved by its owners/managers, about ensuring that its Service Network is:
  - financially stable;
  - able to meet financial obligations as they fall due; and
  - able to meet financial contingencies arising from reasonably foreseeable business risks.

5.3.2 Planning

- Does the agency plan for the financial stability of its Service Network using suitable tools including:
  - financial risk analyses?
  - balance sheets?
  - budgets?
  - cashflows?

5.3.3 Revenue Obligations

- Does the agency have controls to assure to a reasonable standard of confidence that it and its Service Network participants have met and can continue to meet their revenue (including superannuation and payroll tax) obligations?

5.3.4 Worker Related Accruals

- Does the agency have controls to assure to a reasonable standard of confidence that it and its Service Network participants have provided for and can meet their worker related accruals (including any paid leave or redundancy entitlements)?

5.3.5 Pricing

- Does the agency have controls to assure to a reasonable standard of confidence that it sets genuine prices that are arrived at after diligent costing of the services to be supplied, taking into account any likely rise or fall in the cost of services and any terms and conditions that allow for variation during the lifetime of its supply arrangement?

5.3.6 Credit Control

- Does the agency have controls to assure to a reasonable standard of confidence that its debtors pay their accounts on time or within reasonable extension arrangements?

5.3.7 Insurance

- Does the agency purchase and maintain (and require that its Service Network participants purchase and maintain) appropriate insurance, or enter into permissible self-insurance arrangements, taking into account the size of their establishment and the nature of the activities and risks they undertake and including, where relevant:
  - business interruption insurance?
  - comprehensive motor vehicle insurance?
  - directors & officers’ insurance?
✓ employment malpractice insurance?
✓ fidelity insurance?
✓ key person insurance?
✓ marine insurance?
✓ professional indemnity & broad form liability insurance?
✓ property insurance?
✓ public liability insurance?
✓ workers’ compensation insurance?

5.3.8 Hold Harmless

• Does the agency have controls to assure, to a reasonable standard of confidence, that it does not enter into improvident hold harmless agreements?

**NOTE:** Such controls may include:

✓ insurance cover extending to contractual liabilities assumed under hold harmless arrangements
✓ terms and conditions under which parties remain responsible to the extent of their contribution to claims giving rise to civil liabilities.

5.4 Safe Work

5.4.1 Commitment

• Has the agency published a policy, approved by its owners/managers about ensuring that workers in its Service Network have a healthy and safe work environment?

5.4.2 Ascertain & Assure

• Does the agency ascertain the regulatory environment that governs the health and safety of workers in its Service Network?
• Does the agency ascertain the nature of health and safety hazards to workers in its Service Network?
• Does the agency conduct regular risk assessments of health and safety hazards to workers in its Service Network?
• Does the agency have controls (including adequate arrangements to conduct site inspections and to address hazards) to assure that workers in its Service Network have a healthy and safe work environment?

5.4.3 Roles & Responsibilities

• Does the agency have a defined structure for the management of work health and safety responsibilities within its Service Network?
• Are roles with respect to health and safety responsibilities clearly and appropriately allocated, documented and made known to Service Network participants?
• Does the agency have clear and appropriate processes for consultation, cooperation and coordination of work health and safety activities between work health and safety duty holders within its Service Network?

5.5 Migration

5.5.1 Commitment

• Has the agency published a policy approved by its owners/managers about ensuring that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy?
5.5.2 Ascertain & Assure

- Does the agency ascertain the regulatory environment that governs the rights to work of workers in its Service Network?
- Does the agency have controls to assure to a reasonable standard of confidence that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy?

5.5.3 Monitoring

- Does the agency regularly monitor the work performed by workers in its Service Network to ensure that it is consistent with all relevant visa conditions?

5.6 Suitable Accommodation

5.6.1 Application

This section only applies to an agency that arranges for a worker in its Service Network to take up a position if, in order to take up that position, the worker has to occupy living accommodation other than the worker’s home.

5.6.2 Commitment

- Does the agency have a policy, approved by its owners/managers about ensuring that workers in its Service Network are suitably accommodated?

5.6.3 Ascertain & Assure

- Does the agency ascertain the regulatory environment that governs the accommodation of workers in its Service Network?
- Does the agency have controls (including means of inspection) to assure that the accommodation of workers in its Service Network meets the requirements of the regulatory environment?

5.6.4 Accommodation Charges

- Does the agency have controls to assure to a reasonable standard of confidence, that accommodation provided to workers through its Service Network is provided at rates that are not extravagant having regard to the quality of the accommodation?

5.6.5 Fringe Benefits

- Does the agency have controls to assure to a reasonable standard of confidence that any fringe benefit tax or revenue impost on accommodation provided by it (or by or through its Service Network) to workers is accounted for and remitted?

5.6.6 Information

- Does the agency have controls to assure to a reasonable standard of confidence that workers in its Service Network receive reliable information (including relevant hazard warnings) in their first language where practicable about accommodation options available to them?
6. Key Terms

**Accommodation**
includes buildings, tents, structures, rooms, fittings, furnishings, equipment, facilities and amenities. It also includes the provision of food and transport to and from the work site.

**Career development services**
means services intended to assist individuals, of any age and at any point throughout their lives, to make educational, training and occupational choices and to manage their careers. These may include services in schools, in universities and colleges, in training institutions, in public (government contracted) employment services, in companies, in the voluntary/community sector and in the sector. They include career information (in print, ICT based and other forms), assessment and self-assessment tools, counselling interviews, career education and career management programs, taster programs, work search programs, and transition services that do not directly involve placement of the individual in employment, self-employment or work as an independent contractor.

**Contract management services**
means commercial services where a workforce services provider, in return for a fee, undertakes responsibility for managing the performance of any obligation under a contract for the performance by a worker of work without undertaking the direct employment or engagement of the worker or the direct performance of the work; but excludes a service that is solely a pay roll service.

**Controls**
See Part 5

**Conviction**
does not include a spent conviction.

**Decently accommodated**
means accommodated to reasonable levels of safety, decency, privacy, hygiene and comfort, in the light of local conditions and consistently with the requirements of the relevant governing regulatory environment.

**Disqualification circumstance**
Each of the following is a disqualification circumstance:

1. having a conviction of:
   a) a serious sexual offence;
   b) a serious offence involving violence;
   c) an offence of slavery or a slavery-like offence;
   d) a tax offence prosecuted under Ch 7 of the *Criminal Code*; or
   e) a serious offence involving dishonesty.

2. being bankrupt or, at any time in the last three years—
   a) having been bankrupt; or
   b) having executed a personal insolvency agreement; or
3. at any time in the last three years having been involved in the management of a corporation when—
   a) the corporation became the subject of a winding-up order; or
   b) a controller or administrator was appointed; or
4. being unlicensed (if licensing is required) or having contravened, or currently contravening, an order of a court or tribunal having a licensing jurisdiction or jurisdiction to impose a banning order; or
5. being disqualified in the state or territory where the services are to be supplied (or another state or territory in Australia) from being licensed, or registered, or from being an employee in the business; or
6. being in partnership with a person who is disqualified in the state or territory where the services are to be supplied (or another state or territory in Australia) from being licensed or registered; or
7. if the entity is a corporation, being banned or disqualified from being involved in managing the corporation; or
8. being under expulsion, suspension or restriction from applying for membership by RCSA or similar industry association.

However, a person is not affected by any such circumstance if relief against disqualification has been granted by a competent authority and any conditions attaching to the grant are transparent and being complied with.

**Financial stability**

means in relation to any entity, that the entity is able to meet its obligations as they fall due and able to meet financial contingencies arising from reasonably foreseeable business risks.

**Government contracted employment services**

means a service or services procured by the Commonwealth Government as part of a declared program of work or program of support under the *Social Security Act 1991* (C’th), including Jobactive, Disability Employment Services, Remote Jobs and Communities Program (Community Development Program), Work for the Dole, Green Army Program and other such programs as may be declared by the Secretary of the Department of Social Services from time to time.

**On-hire services**

means services where a workforce services provider makes a worker engaged by the provider available to perform work, whether under a contract of service or a contract for services, for a customer of the provider; and:

a. the worker works (or is to work) under the customer’s direction, or under the direction of another person for the customer’s benefit; and
b. the workforce services provider is responsible (through itself or through its appointees) for performing the obligations of the engagement owed by the provider to the worker, including paying the worker for the work.

**Pay roll service**

means services to facilitate the payment of wages or remuneration by an employer or engager of a person to perform work, where the commercial service is provided by a person who is not the
employer or engager of the person performing the work and includes escrow services and services to remit money in order to meet revenue and superannuation obligations.

**Placement services**
means services where a workforce services provider presents, or represents workers; and includes services for finding work for a worker. However, services are not placement services by reason only that they are career development services.

**NOTE**: A job board that is more than a mere platform for advertising job vacancies or work seeker availability but which matches worker to work opportunities would provide placement services.

**Present a work seeker**
in relation to a worker includes the disclosure of any information about the worker whether on an identified, anonymous or pseudonymous basis.

**Reasonable standard of confidence**
a reasonable standard of confidence in relation to a matter, circumstance, or state of affairs means that, after reasonable inquiry, you are comfortably satisfied, within an acceptable degree of residual risk, as to its existence and that you can demonstrate the reasonable basis for your satisfaction.

**Regulatory Environment**
includes statute based law at all levels of government, as well as regulatory policy, common law duties and contractual duties.

**Serious offence**
means a criminal offence that is chargeable on indictment

**Service Network**
the set of contracts, arrangements or understandings for the performance of any two or more Service Network roles.

**Service Network participants**
means the persons with whom the Certified Workforce Services Provider has a contract, arrangement or understanding for the performance of any of the Service Network roles.

**Service Network roles**
any of the following roles in relation to workers:

- selection
- engagement
- mobilisation
- performance of work (by workers)
- management & supervision
- accommodation
- payment
- demobilisation

**Structure**
includes a transportable hut, a caravan, sleeping tube and pod.
Worker

where the context permits, includes a work seeker.

Workforce contract

means a contract which is wholly or principally for the supply of labour.

For the purposes of this definition, a contact is **principally for the supply of labour** if more than half of the direct costs properly attributable to deliverables to be supplied under the contract is for labour.

Workforce contracting services

means services where a workforce services provider uses a prescribed worker as part of a workforce engaged or deployed by the workforce services provider to perform work in meeting the requirements of a workforce contract that the workforce services supplier has with a customer.

For the purposes of this definition:

1. A person is a **prescribed worker** if:
   a. the person does not genuinely operate their own business and perform the work in that business; AND
   b. one or more of the following apply:
      i. a modern award covers the person or would cover the person as an employee if employed to do the work;
      ii. an enterprise agreement applies to the person in relation to the work; or would apply to the person if employed to do the work.

2. An workforce services provider uses a prescribed worker if the workforce services provider:
   a. makes arrangements with the work seeker that require the worker to follow its instructions or work under its general guidance; or
   b. determines where, when, or how the work seeker carries out their work; or
   c. requires the worker to sell or supply their work product to it (or its nominee) as the first link in a buying or supply chain in relation to that work product.

3. Sub-paragraph (2) applies regardless of whether the workforce services provider makes the arrangements directly with the worker or indirectly through another person.

4. A **workforce** is group of two or more workers who are working or available to work to meet the requirements of a workforce contract.

Workforce services

means any of the following services, other than government contracted employment services:

- workforce contracting services;
- contract management services;
- on-hire services;
- placement services.

Workforce services provider

means a person or entity providing Workforce services, as defined.
Work status & remuneration concerns the:

- status of the worker as an employee, independent contractor or other category of worker (e.g. volunteer, bailee etc);
- type of work (e.g. full time, part time, casual, daily hire etc);
- terms and conditions on which work is performed (e.g. hours, shifts, spread of hours, breaks etc);
- work related pay and other entitlements (e.g. leave, loadings and penalties, allowances, expense reimbursement etc);
- allowable deductions from pay; and
- workers’ freedom of association and general protections.
Appendix

Why Single-Point Licensing (or Certification) Doesn’t Work in Multi-Actor Environments

- FARM CLIENT: Provides on-site management of workforce. Can be engaged by C, LHF, or WFC. Handles payroll and deducts charges to workers.
- CONTRACT MGMT COY: Mobilises, accommodates & caters for workforce deployment. Charges workers. Can be engaged by C, LHF, WFC or CMC.
- LOGISTICS FIRM: Assembles workforce to provide harvest services.
- LABOUR HIRE FIRM: Charges workers and creates debt bondage. May be offshore.
- SOURCING FIRM: Informs workers and creates debt bondage. May be offshore.
- HAWKERS SPOTTERS: Sources workers.

Licence/Certification “Safe” Zone

Andrew C. Wood 2016
Adapting to Change

How private employment services facilitate adaptation to change, better labour markets and decent work
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EXECUTIVE SUMMARY

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Labour markets are facing fundamental structural changes

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• Reduce time lag between recovery and job creation
• Help companies to adapt better and faster to economic cycles
• Offer a wide range of HR services so that companies can focus on their core business
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THE BOSTON CONSULTING GROUP

The Boston Consulting Group (BCG) is a global management consulting firm and the world’s leading advisor on business strategy. It partners with clients in all sectors and regions to identify their highest-value opportunities, address their most critical challenges and transform their businesses.

The BCG customised approach combines deep insight into the dynamics of companies and markets with close collaboration at all levels of the client organisation. This ensures that clients achieve sustainable competitive advantage, build more capable organisations, and secure lasting results.

Founded in 1963, BCG is a private company with 74 offices in 42 countries. For more information, please visit www.bcg.com.

CIETT

As the voice for labour choice, Ciett is the authoritative organisation representing the interests of the organised and well regulated private employment agency industry across the world. Recognised as such by international organisations (e.g. EU institutions, International Labour Organisation, OECD, World Bank), Ciett represents the industry at large (bringing together 46 national federations) and its diversity (representing seven of the largest multinational staffing companies as well as tens of thousands of SMEs). Ciett recognises the vital role that private employment services play in helping organisations, economies and individuals facilitate adaptation to change, and their capacity to increase labour market participation, reduce unemployment, build better labour markets and deliver decent work. However, Ciett also recognises that inadequate regulation and a small number of disreputable agencies can prevent the industry from fulfilling its potential. The right environment and level of appropriate regulation, collaborating with policy makers, trade unions and user organisations to improve the governance and quality standards of the industry across the world.

Ciett operations are organised across the globe through regional entities. Eurociett represents the private employment services in Europe, Clett&a in South America and Asiaciett in Northern and Southern Asia/Pacific. Through their network of 169,000 branches and their 741,000 permanent employees, Ciett members employ 9 million workers (daily full time equivalent) on a yearly basis. They deliver services through the full spectrum of human resources: including temporary agency work, recruitment, interim management, executive search, outplacement and training. Ciett promotes the contribution of millions of agency workers to our economy. Representing reputable private employment agencies, members of Ciett refuse to compete at the expense of workers’ rights and work hand-in-hand with governments and trade unions to fight illegal work and social dumping. Ciett also aims to promote and increase quality standards within the agency work industry, through Codes of Conduct and other means of self-regulation. For more information, please visit www.ciett.org.
Executive Summary
Adapting to change

PRIVATE EMPLOYMENT SERVICES ENABLE ADAPTATION TO CHANGE IN INCREASINGLY VOLATILE AND COMPLEX LABOUR MARKETS

Economic cycles are becoming more volatile, resulting in a constant tension between job creation and job destruction. Adapting labour markets to these new dynamics is one of the greatest challenges societies face today. In this new, complex reality of employment markets, the role of labour market intermediaries is crucial. Workers and employers need an intermediary to react immediately to better match supply with demand and ensure that maximum levels of labour market participation are maintained.

Standing as a partner in sound economic times, private employment services enable labour markets to adapt when economies are facing changes. The industry reduces time lags between recovery and job creation. It also helps companies to adapt better and faster to economic cycles. The sector provides effective workforce solutions that enable employers to seize opportunities and manage fluctuations effectively. It increasingly offers an array of professional services to deliver work solutions ranging from consulting and recruiting to HR services and outsourcing.

Research shows that those organisations which strategically combine internal flexibility with the use of agency work to address fluctuations in demand appear to be best placed to manage increasing volatility and react to market opportunities.

For workers, private employment services offer a variety of work contracts that meet the new diversity of expectations and attitudes to work. The organisation’s international reach and specialised market knowledge, the sector facilitates adaptation to change in labour markets that are becoming increasingly complex, volatile and unpredictable.

The Boston Consulting Group/Ciett study finds that the private employment sector stands for a number of characteristics that help labour markets to remain and become more efficient, and making it a valuable employment partner for governments, companies and workers in the decades to come.
FACTUAL EVIDENCE

- When plotted against the overall employment rate, **the private employment services industry picks up several months earlier in times of recovery.**

- **Private employment services reduce the time-lag between recovery and job creation:** There is a one-to-one correlation between the evolution of the number of agency workers assigned and the evolution of GDP.

- When asked about the main reason they decided to work through private employment agencies, 60% of agency workers in France answered **“to find a job quickly.”**

- The majority of agency workers from the UK (66%), Poland (60%), Netherlands (58%) and Belgium (52%) agree with the statement **“agency work helps in having a balanced life.”**

PRIVATE EMPLOYMENT SERVICES REDUCE BOTH STRUCTURAL AND FRICTIONAL UNEMPLOYMENT

As labour market intermediaries that increase transparency, the private employment services contribute to reducing the two dimensions of unemployment: structural unemployment - by creating new jobs and skills; and frictional unemployment - by ensuring a better and faster match between supply and demand in labour markets.

The sector is an engine of job creation and increases the range of job options available. It contributes to matching supply with demand in the workplace and is able to do this on a global scale, addressing the emerging mismatch of talent and demand between geographies and sectors.

With labour markets in perpetual motion, jobs are being both created and destroyed on a constant and daily basis. In this dynamic context, active labour market policies with strong cooperation between public and private employment services are needed if economic growth and inclusive labour markets are to be maintained.

The ability of private employment services to deliver jobs ahead of the classic job creation curve makes the sector an important partner in managing fluctuations effectively. Private employment services actually start to create jobs even at very low levels of GDP growth and effectively jump-start economies.

In addition, by providing an organised and regulated form of flexible work, responsible private employment services contribute to eliminating the most precarious forms of employment: illegal and undeclared work.

FACTUAL EVIDENCE

- **Unemployment and agency work rates follow inverse patterns:** The higher the agency work penetration rate, the lower the unemployment rate.

- **Private employment services create jobs:** In the USA, private employment services provided 401,000 new jobs in 2010, the largest annual growth posted since 1994. In Europe, since the low point of the economic crisis in 2009, the sector has provided up to mid 2011 at least 900,000 new jobs on top of the 3 million agency workers that have remained employed throughout the downturn. This builds on the performance during the period from 2002 to 2007 when there were 1.3 million new jobs in the industry.

- **Agency work does not substitute permanent contracts:** 74% of user organisations would not consider hiring permanent workers as an alternative to taking on agency workers and 62% of them would not have created jobs if they had no access to private employment services.
Adapting to change

Private employment services contribute to reducing undeclared work: There is an inverse correlation between the level of illegal economic activity and the level of agency work penetration. In Italy, agency work was introduced legally by the government in 1998 as a means to fight undeclared work. In Belgium, private employment services play a key role in distributing “services cheques” turning undeclared domestic cleaning staff into formal workers.

In Australia, recognising the efficiency of the private sector, the government has completely outsourced its public employment services to private and non-profit organisations. Compared with the situation before outsourcing, the current system is showing about three times the output performance with approximately one third of the costs.

By contributing to reducing illegal work and providing work opportunities for people who are furthest away from employment, the PrES industry plays a key role in maximising labour market participation, therefore contributing to a more inclusive society.

In Australia, recognising the efficiency of the private sector, the government has completely outsourced its public employment services to private and non-profit organisations. Compared with the situation before outsourcing, the current system is showing about three times the output performance with approximately one third of the costs.

Private employment services drive down segmentation of labour markets

Segmentation of labour markets can be characterised by a low level of participation and low geographical and occupational mobility. The transition function that private employment services provide is crucial in maintaining inclusive labour markets with high levels of participation.

By identifying where employment needs exist and matching them with labour supply, private employment services provide a stepping-stone function that enables people to transition from education to work, from unemployment to employment and from job to job. They also enable people to transition from part-time work to full-time work (and vice-versa) and between sectors in line with economic demand.

This role of “transition agent” is particularly relevant among young and disadvantaged groups (e.g. ethnic minorities, women returning to the labour market, older workers). This is because private employment services provide easy access to the labour market (they assist job seekers in finding the right position), allow employers to recruit these disadvantaged workers with a low risk (probation period) and offer contractual arrangements that meet the constraints of this group of workers (need to gain confidence again by working part-time or for a limited period of time at the outset).

By contributing to reducing illegal work and providing work opportunities for people who are furthest away from employment, the PrES industry plays a key role in maximising labour market participation, therefore contributing to a more inclusive society.

FACTUAL EVIDENCE

• An estimated 12 million workers in Europe each year use the services of private employment agencies to enter the labour market, change jobs, upgrade skills or move toward permanent positions.

• Private employment services provide a stepping stone: In South Africa, just 15% of workers were in jobs before accessing agency work; the figure rises to 61% afterwards. In France, just 11% of workers had jobs before they took up agency work, and this figure jumps to 66% working due to agency work. In Norway, the percentage of people employed jumped from 16% to 65% due to agency work. In Sweden, labour market participation of agency workers rose from 34% to 85%.

• Private employment services help young people to enter and stay in labour markets: 35% of agency workers in Europe are under 25 years of age. Agency work is often their first opportunity to gain work experience.

• Target groups benefit from private employment services: 66% of agency workers were unemployed before seeking help from private employment agencies. In addition,
older workers (over 50 years) represent an increasing share of agency workers: in France and Belgium, the share of older workers as a percentage of agency workers is increasing at twice the rate of older workers in the wider labour market.

• Across Europe, agency work is recognised as an effective channel to find a first job (from 92% of population in the UK and 86% in Belgium to 71% in Italy and 59% in Germany) as well as to find a full-time job (from 90% in the UK and 78% in the Netherlands to 43% in Germany and 40% in Italy).

PRIVATE EMPLOYMENT SERVICES CONTRIBUTE TO MATCHING AND DEVELOPING THE SKILLS NEEDED IN LABOUR MARKETS

Shifting global demographics are creating a significant mismatch of talent around the world with labour shortages growing in the USA, Japan and Europe while the southern hemisphere is facing the prospect of more workers than jobs – and often, where jobs are available, workers do not have the skills needed. In addition to dealing with seasonal skills fluctuations, the industry enables the adaptation of skills to structural changes.

The activities of private employment services not only reflect sectoral shifts but also help economies to adapt to them. The industry is helping workers to move from declining sectors to in-demand ones. By providing access to vocational training, the sector also helps to plug the talent gap and to develop a higher-skilled workforce. Re-skilling and up-skilling lie at the very core of the sector and are central to its role in meeting demand with supply in employment markets.

By acting as an agent for workers, private employment services also help them to access the next assignment and ensure that they can transition easily to further employment. Vocational training for agency workers is demand-driven and organised in close cooperation with user companies with a short-term and pragmatic approach catering especially well to lower skilled workers. As a result, agency workers can make sideward and upward transitions across sectors and geographies to benefit their career path.

FACTUAL EVIDENCE

• Private employment services adapt skills to sectoral shifts: In the USA, the professional sector [i.e. higher skilled agency workers] today accounts for 55% of the staffing market compared with just 36% back in 1995, reflecting the overall demand for a higher skilled workforce. In France, the percentage of agency workers placed in service industries has risen some 10% in the past ten years, reflecting and accompanying the shift to a more services-oriented economy.

• Private employment services create skills: In 7 European countries (Belgium, France, Luxembourg, Netherlands, Italy, Spain and Austria), sectoral training funds managed by social partners have been established to facilitate access to vocational training for agency workers. More than €500 million are invested every year by these training funds in schemes specifically designed for agency workers.

• In the Netherlands, agency workers receive substantially more training than fixed term workers and regularly undergo training to find new job opportunities. Due to the heavy representation of younger people in private employment services, 70% of agency workers undergoing training are younger than 35 whereas only 50% of permanent workers trained fall within this age bracket.
PRIVATE EMPLOYMENT SERVICES DELIVER DECENT WORK

The challenge for economies around the world is to marry workforce adaptation to change with the need for decent jobs as laid out in the International Labour Organisation’s Decent Work Agenda. The organised and regulated private employment sector provides decent work and offers particular advantages when compared with other forms of external flexible work such as on-call work, fixed term contracts and outsourcing which can be very precarious for workers.

Because agency workers are the employees of the private employment agencies (whether temporary or permanent), the sector is in a unique position to negotiate their employment and working conditions. Where relevant, these employment and working conditions are negotiated with trade unions as the agency workers’ representatives. Therefore, as the only form of flexible work organised as a sector on its own, the industry itself has concluded a large number of collective labour agreements at national level, especially in Europe. As a result, agency workers are being protected by rights negotiated through collective bargaining, whether at sectoral or user-company level.

As such, the private employment sector is an enabler of social innovation. It has organised new ways to secure social protection for workers under labour relations that are different from permanent contracts. In several countries, the industry has developed schemes to ensure the portability and transferability of the agency workers’ rights (health insurance, complimentary pension schemes, and vocational training).

In Europe, private employment agencies are often viewed as the embodiment of flexicurity due to their combination of flexibility and security for both companies and workers.

By promoting the need for proper regulation of the industry and encouraging strengthened quality standards, private employment services are responsible employers working towards the sound and sustainable development of the sector. The industry is strongly committed to work hand-in-hand with governments and trade unions to fight abuses and illegal practices arising from untrustworthy, unethical and rogue private employment agencies as all parties have a common interest in doing so.

FACTUAL EVIDENCE

- The industry is committed to developing constructive social dialogue: In more than 25 countries around the world (18 in Europe, 7 outside Europe), the use of agency work is being regulated by collective labour agreements, whether negotiated at cross-sectoral, sectoral and/or user company level. In 2010 the Japanese Staffing Services Association (JASSA) signed a joint declaration with Rengo, the Japanese trade union confederation, on how to improve the treatment of agency workers and promote fair practices within the industry.

- These collective labour agreements led to the establishment of bipartite funds jointly managed by sectoral social partners in several countries, providing agency workers with extra protection through training (Belgium, France, Luxembourg, Netherlands, Italy, Spain and Austria), health & safety (Belgium, France, Netherlands), pensions (France, Netherlands, Italy, Switzerland) and complementary social benefits (Belgium, France, Netherlands, Italy).

- The industry works closely with the International Labour Organisation and international trade unions (ITUC, UNI Global) to promote the adoption of appropriate regulation on agency work in countries where such regulation does not yet exist, putting forward the provisions of Convention n°181 on private employment agencies as guidelines.
The industry has developed specific tools to ensure that quality standards and regulation (whether by law or collective bargaining) are being enforced. In France (CPPNTT), Belgium (CNT) and the Netherlands (SNCU & SNA), bipartite bodies are in place to monitor and ensure compliance with existing regulation of agency work. In Belgium and Portugal, an Ombudsman has been established to deal with complaints from agency workers and to look for remedies. In Sweden and the Netherlands, where no licensing schemes exist, a certification system is in place to check conditions under which private employment agencies operate.

When asked about their working conditions, satisfaction among agency workers is very high. Across Europe, a very large percentage of agency workers would recommend agency work to their family or friends, ranging from 83% in the UK and 76% in Poland to 74% in Belgium, 69% in France, 62% in the Netherlands and 55% in Italy. In France, 91% of agency workers have a positive perception of agency work (more than any other types of public, be they jobseekers, public or private sector workers or students). 93% are happy with their work, 89% with their work-life balance and 79% with their salary.

EFFICIENT LABOUR MARKETS NEED APPROPRIATE REGULATION FOR PRIVATE EMPLOYMENT SERVICES

In many countries, the private employment services industry already plays a key role in facilitating the adaptation to change, be it seasonal, cyclical or structural. However, in several others, the contribution of the sector to enabling change adaptation is still hampered by inappropriate, unbalanced regulation. In some cases, the industry cannot rely on a clear and stable legal environment due to the lack of legal recognition of this specific triangular employment relationship. In some other cases, the industry still operates in a regulatory framework that was adopted decades ago, at a time when labour markets were substantially different. As a result, private employment services face conditions that are now outdated - such as the limitation of services and labour contracts to be provided, sectoral bans, too limited a number of reasons of use and too limited maximum duration of assignments.

In order to assess how to optimise the contribution of the private employment services industry to better functioning labour markets, The Boston Consulting Group and Ciett have devised two indicators:

- A Regulatory Efficiency Index based on the regulation of private employment services in place in each national market.

- A Labour Market Efficiency Index, based on 6 objective criteria calculated for each country: overall employment rate, employment rate 15-24, employment rate 55-64, annual hours worked, labour participation rate and unemployment rate.

EXPLANATORY NOTE

To explore what would be the optimal regulatory framework for private employment services in order to deliver better functioning labour markets, The Boston Consulting Group and Ciett have identified four main types of environment in which private employment services currently operate:

1. **Market driven** – Countries where private employment services and labour laws are relatively liberalised and corporations enjoy a high degree of freedom in determining the most suitable form of employment. Self-regulation also plays an important role in this cluster.
2. Social dialogue based – Countries where private employment services and labour laws are strongly influenced by negotiations between the social partners. In this environment social partners have the freedom to determine rules by negotiation.

3. Legislator driven – Countries where private employment services and labour law are mainly determined by government bodies and legislation both at national and regional level, with formal legislation comprising the main basis for labour law.

4. Emerging – Countries where private employment services are still young and labour laws and legislation are still being developed. Legislation is evolving with significant informal work in some cases.

Three important subgroups were identified within the Social Dialogue based environment creating a total of six types of country cluster in which private employment services operate.

When the country clusters are mapped against the Labour Market Efficiency Index, it becomes apparent that labour markets perform differently based on the characteristics of the environment. The market driven and Social dialogue based markets consistently perform better and display greater efficiency than those operating within a legislator driven environment due to some outdated limitations on services and barriers to entry that the system places on private employment services and the lower capability of social partners to define the appropriate level of regulation. Emerging markets also demonstrate higher levels of inefficiency as their legal frameworks and social systems are still in development and do not enable the private employment services to play a role.

Importantly, the report does not seek to recommend one type of cluster over another. Indeed it acknowledges that there is no “one size fits all” solution and produces strong evidence to suggest that regulation must be relevant to the culture, values and priorities of the market and its society.

While the private employment services industry has clearly developed differently in each cluster, it is a fact that when appropriately regulated, the sector is able to increase labour market participation by creating jobs, supporting the reduction of illegal work, attracting disadvantaged people to the labour market and allowing for more work opportunities and job options.

FACTUAL EVIDENCE

- Countries with no specific regulation on agency work, or outdated regulation, rank poorly in terms of Regulatory Efficiency Index (such as Turkey, Argentina, Chile, Greece, Luxembourg, Spain) while more mature markets in which regulation of private employment services has been developed and adjusted regularly to the needs of the labour markets show top scores (e.g. Netherlands, Sweden, USA, Denmark, UK, Australia, Belgium, Germany, France).

- Countries showing higher scores of labour market efficiency are the ones where the private employment services industry has been able to operate for many years (with the notable exception of France). By contrast, countries in which the sector has been opened only recently (e.g. Chile, Eastern Europe) or is still not appropriately regulated (e.g. Mexico, Luxembourg, Spain, Portugal) score lower.

- Labour market effectiveness greatly influences countries’ competitiveness: there is a direct correlation between the scores of the Labour Market Efficiency Index and the World Economic Forum Competitiveness Index.
MOVING FORWARD

The report underlines that the industry is uniquely placed to support governments, companies and workers to cope with accelerating dynamics in labour markets and manage change, whether seasonal, cyclical or structural.

The report makes a number of recommendations for policymakers at international, regional and national level underlining that the private employment services sector can maximise its contribution to sustainable growth and play its role in offering solutions to meet the new economic reality.

1. Policymakers should ensure that the regulatory framework in place for the private employment services sector is appropriate thereby enabling it to play its role fully.

   a. In countries where no specific regulation exists for the industry, a legal framework should be adopted; this could be achieved by using the ILO Convention n°181 on private employment agencies as a framework. Social partners should be closely associated in the definition of such a regulatory framework.

   b. In countries where specific regulation already exists, policymakers should regularly review the conditions and restrictions that apply to the use of private employment services, to ensure that they are not outdated or no longer justified based on the new reality of the labour market.

2. Policymakers should recognise that the private employment services industry is a sector on its own. As such, it should benefit from the freedom to collective bargaining and, if relevant, be able to negotiate with trade unions on the level of regulation and working conditions of agency workers.

3. Appropriately regulated private employment services should be involved by policymakers in the designing and implementation of active labour market policies - particularly through the development of public-private cooperation. Their contribution to facilitating transitions in the labour market, to increasing labour market participation by creating jobs and reducing undeclared work and to delivering decent work should be included in public employment policies.

Private employment services enable labour markets to adapt to change. In order to further enhance its contribution to decent work and better functioning labour markets, the sector also pledges to deliver a number of key actions.

1. The sector commits to work alongside all relevant stakeholders including social partners in order to optimise regulation on private employment services. It will put emphasis on gaining further ratification of the ILO Convention 181 on private employment agencies and/or ensuring that the key provisions of the Convention are being transposed in as many countries as possible around the world.

2. The sector commits to ongoing action to improve the governance and the quality standards of the industry around the world. It will push and support the establishment of national federations of private employment services in countries where none yet exist. It will enhance quality norms and codes of conduct and promote the adoption of complaints and remedies procedures to handle cases of malpractice.

3. It commits to becoming an active career agent for workers and representing more widely the challenges and opportunities of today’s workplace and the initiatives needed, including upskilling, social innovation, career guidance and effective transitions in order to ensure decent work for all. To achieve this, the private...
employment sector pledges to make further investments in more and better training of its own staff and agency workers.

4. The sector will undertake greater communication efforts to explain the role that the industry plays in contributing to efficient labour markets and to fight against the unethical and illegal side of the industry. In addition to conducting further research and investigations in conjunction with trade unions, the sector pledges to work with them to fight abuses and illegal practices arising from untrustworthy, unethical and rogue private employment agencies as both parties have a common interest in doing so. These unscrupulous agencies damage the image of the well-organised and responsible agencies, represent unfair competition and lead to the unacceptable abuse of workers.

5. The sector commits to expanding its role as a labour market intermediary partnering with all relevant stakeholders to deliver inclusive, well functioning, sustainable labour markets with high levels of participation and a coordinated approach to matching supply with demand.
Introduction
Labour markets around the world are facing fundamental structural changes. Increased globalisation means that countries are experiencing significant shifts in their economies characterised by accelerating change, increased volatility, lack of visibility and complexity.

Volatility in market capitalisation, in revenue and in operating margins all serve to create an increased feeling of social, economic and financial instability (see Figure 1). As governments and companies seek to navigate this new reality they are looking for a diversified and mobile workforce that will enable them to adapt quickly and build new bases of competitive advantage. At the same time, workers are increasingly interested in new ways of working (combining flexibility and security) and want to manage their work better in order to strike a work/life balance to suit their life stage and priorities.

The joint Boston Consulting Group & Ciett research finds private employment services are uniquely placed to support governments, organisations and workers to manage increased structural changes and cope with the fast-moving dynamics in labour markets. The HR solutions that private employment services provide allow stakeholders to seize the opportunity and leverage the change to their advantage.

Private employment services support companies and workers in adapting to seasonal and cyclical changes in the economy. The sector provides innovative solutions that enable organisations, whether public or private, to manage fluctuation in demand and adapt their staffing needs accordingly. Seasonal industries such as the postal service, retail, construction and financial auditing have an established relationship with private employment services which help them to manage their busy working periods by providing additional workers with the appropriate skills.
Cyclical fluctuations, while less predictable, are increasingly a fact of life and as economies alternate between periods of positive and negative growth so private employment services have grown in order to meet an increased demand. Most recently, following the global recession, private employment services have witnessed a very rapid recovery in terms of job creation. While many agency workers were the first ones to be impacted by the crisis, they have also benefitted from the recovery (first out- first in model). Since the low point in the economic crisis in 2009, the sector has created at least 900,000 new jobs in Europe, on top of the 3 million agency workers that remained employed during the crisis. Meanwhile in the USA, private employment services created 401,000 additional jobs in 2010. This serves to underline the valuable role that the sector plays in supporting economies and businesses through seasonal and cyclical variations.

However, the increased incidence of structural change [globalisation, demographic evolution, sectoral and IT shifts, increased volatility and complexity] in recent years has brought a new set of challenges to labour markets. Economies across the world are experiencing deep structural shifts at sectoral, geographic and demographic levels, leading to the need for new skills and jobs.

These new labour market dynamics present governments and policymakers with a core set of new challenges that require them to think and act differently. The challenges can be seen as fivefold:

1. How to deal with increasingly unpredictable and volatile employment markets?
2. How to reduce persistently high levels of unemployment whether structural or frictional which young people, which young people in particular are facing?
3. How to encourage transitions in labour market in order to reduce segmentation and make transitions pay?
4. How to reduce the mismatch between the supply of and demands for skills?
5. How to ensure that new forms of labour contractual arrangements are not detrimental to decent work?

In this new reality of work, the role of labour market intermediaries is crucial in order to enable adaptation to demographic evolution, skill shifts and new attitudes to work. For each of these challenges to be tackled, the private employment services industry offers expertise and solutions, which are described in this report.
Chapter 1

Private employment services enable adaptation to change in increasingly volatile and complex labour markets

“Satisfaction levels in general are very high. All stakeholders are pleased with the employment services system and governments clearly value its efficiency and the positive impact it has on the public budget.”

— Sally Sinclair, CEO of Australian National Employment Services Association
Constant structural changes are leading to increasing instances of job creation and destruction. Adapting labour markets to this new dynamic is one of the greatest challenges that societies face today. As EU Commissioner for Employment, Social Affairs and Inclusion László Andor puts it, “labour markets do not work on static patterns, with stocks of the employed, unemployed and inactive. They are more like a machine in perpetual motion. However, there is no ‘invisible hand’ to shift workers automatically from one job to another, so unemployment and vacancies coexist.”

In this new reality of employment markets, the role of labour market intermediaries is crucial. Workers and employers need a facilitator to match supply with demand and ensure that maximum levels of labour market participation are maintained. In order to make transitions pay, governments need to embrace active labour market policies with strong cooperation between public and private employment services that will be effective in creating jobs, facilitating transitions, increasing labour market transparency and driving economic growth and prosperity.

PRIVATE EMPLOYMENT SERVICES REDUCE THE TIME LAG BETWEEN RECOVERY AND JOB CREATION

Cyclical fluctuations are increasingly a fact of life with national economies and indeed with the global economy alternating between periods of positive and negative growth. The impact that these fluctuations have on employment and society presents a significant challenge for governments and companies.

As a leading economic indicator, the private employment services industry is one of the first to recognise the onset of a downturn but also the first to perceive the recovery when it comes (first out-first in model in which agency workers might be first to lose their jobs in times of economic crisis but they will be first to get back to work as soon as recovery begins). There is strong cor-

Figure 2
Evolution of number of hours worked by agency workers versus EU 27 GDP growth rate (year on year)

Growth rate of GDP volume
Change in hours worked (European average)

Source: Eurostat, Agency business Indicator, CIETT, Federations

relation between the evolution of number of agency workers assigned and the evolution of GDP in a given quarter (see Figure 2), while it usually takes 3 to 9 months for the overall employment rate to adapt to the economic fluctuations.

It is the industry’s ability to respond quickly to changes in GDP growth that sets it apart and makes it such a vital component in economic growth. Recovery of GDP and agency work are mainly recorded in the same quarter, with OECD figures on GDP growth showing an almost simultaneous correlation with growth in the agency work market in 2009 and 2010. This can be attributed to organisations experiencing growth looking to private employment services to provide them with the manpower to order to meet increased demand (Figure 3).

There is an inevitable time-lag between economic recovery and a decrease in unemployment levels. Thanks to their capacity to react quickly and their knowledge of where skills are available, private employment services are ideally placed to plug this gap and provide workers with jobs and companies with the manpower they need to take advantage of an economic upswing.

At the onset of the financial crisis in 2008, the sector saw its global employment numbers fall by one million. However, thanks to its ability to respond swiftly to the return of growth, by 2009 the majority of European countries experienced increases in demand with agency work penetration rates back to their 2006 levels as user companies responded to an upturn in business and reinforced their workforce. In countries such as Germany, Sweden and Italy, the number of workers placed by private employment services have already returned to their pre-crisis level highs (see Figure 4).
As an engine of job creation, private employment services are particularly effective in speeding this process during periods of economic recovery because they literally draw jobs out of the market. The agency work level of activity is one of the first things to experience growth as economies tentatively recover and new jobs begin to be created in response to increased demand. Plotted against the overall employment rate, the private employment services industry picks up earlier in times of recovery than the rest of the labour market (with a time gap of between 3 to 9 months) – See Figure 5.

Figure 4
The job creation engine of agency work is taking off again

Agency work provides needed flexibility to accelerate recovery
Agency work levels are picking up earlier than total employment levels

Figure 5

Note: Agency worker figures measured in daily average numbers (in full-time equivalents)
1. 2010 Data estimated for UK, Belgium, Spain (Ciett corporate member estimates) 2. Ciett estimate
Source: Ciett national reports, Ciett corporate member estimates

As an engine of job creation, private employment services are particularly effective in speeding this process during periods of economic recovery because they literally draw jobs out of the market. The agency work level of activity is one of the first things to experience growth as economies tentatively recover and new jobs begin to be created in response to increased demand. Plotted against the overall employment rate, the private employment services industry picks up earlier in times of recovery than the rest of the labour market (with a time gap of between 3 to 9 months) – See Figure 5.
PRIVATE EMPLOYMENT SERVICES HELP COMPANIES TO ADAPT BETTER AND FASTER TO ECONOMIC CYCLES

Private employment services mitigate the impact of economic crisis in labour markets and those companies using agency work can be seen to accelerate faster out of the downturn. An IW Consult study\(^2\) carried out in Germany and covering the 2009-2010 period demonstrates how those organisations using agency work recorded revenue growth a full 5% higher than those who did not (Figure 6). The study demonstrates that the ability to react to increasing demand quickly results in higher revenue growth and a better financial performance.

This outcome is confirmed by research recently undertaken by Eurofound, the European Foundation for the improvement of living and working conditions, which clustered companies into five different groups according to their flexibility profiles\(^3\). Evidence suggests that companies using a combination of flexible working hours, overtime, performance related pay schemes and agency work are the ones experiencing the strongest financial results, highest labour productivity and greatest choice of staff and employee motivation.

Morgan Stanley Research\(^4\) comprising interviews with 200 HR managers in Europe and the USA confirms the value of private employment services in providing adaptation to change for companies. 76% of respondents cited the ability to respond quickly to business demands when asked why they chose agency work and 65% referenced a desire for greater flexibility (Figure 7).

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\(^1\) IW Consult GmbH study “Zeitarbeit in Deutschland” 2011

\(^2\) Flexibility profiles of European companies, European Company Survey 2009, Eurofound

\(^3\) “Staffing survey: Temporary attractions are peaking” by Morgan Stanley – March 2011

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Figure 6

Companies using agency work accelerate faster out of downturn

German study shows higher revenue growth for agency work user organizations compared to other firms

<table>
<thead>
<tr>
<th>Revenue growth 2009 – 2010 (%) for different splits</th>
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<tbody>
<tr>
<td>Small (&lt; 50 employees)</td>
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<tr>
<td>Service(^1)</td>
</tr>
<tr>
<td>11%</td>
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<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

\(^1\) Including construction and other sectors

Source: IW Consult GmbH study “Zeitarbeit in Deutschland” 2011

Ability to react to increasing demand quickly results in higher revenue growth and thus better results
Absorbing activity fluctuations (whether seasonal or cyclical) is the main reason mentioned by 76% of companies in the Netherlands, Germany, Switzerland and Sweden when asked why they use the services of private employment agencies. Half of these companies also use agency work to replace absent permanent staff, allowing them to cope with unpredictable sickness or vacancies (Figure 8).

**Figure 7**
Main reason to use agency work is to respond quicker to business demands

**Figure 8**
Key lever in addressing volatility in high-performing countries

### MAIN REASONS TO MAKE GREATER USE OF AGENCY WORK

- Can respond quicker to business demands: 76%
- Desire for greater flexibility: 65%
- Can try out potential permanent hire: 52%
- Desire to keep fixed cost low: 35%
- Uncertainty over pay or taxes: 9%
- Uncertainty over medical costs: 4%
- Others: 4%

**Besides the overarching topic of flexibility, companies also use agency work to hire permanent staff (extended trial period)**

Source: Morgan Stanley Research (interviews with 200 HR managers in the US and Europe)

CRITICAL TO MANAGING SEASONALITY AND ECONOMIC CYCLICALITY...

- Share of companies using AW to absorb activity fluctuations (% 2009)

...AS WELL AS ALLOWING FLEXIBILITY FOR WORKERS WHO NEED IT, I.E. SICK OR MATERNITY LEAVE

- Share of companies using AW to replace absent permanent staff (% 2009)

Source: Ciett national reports
CASE STUDY 1: RESPONDING TO IMMEDIATE LABOUR MARKET NEEDS IN THE AFTERMATH OF NATURAL DISASTER

Following the earthquake and tsunami in Tōhoku, Japan on 11 March 2011, the Fukushima Nuclear power plant suffered a number of failures. Resulting from this, a private employment agency was contacted by the power plant operators to provide 1800 temporary agency workers. These agency workers were placed in call centres in order to respond to compensation claims for loss of use of property and other issues related to the nuclear power plant failure.

This is an example of private employment services’ ability to respond to immediate labour market needs, even for large numbers of workers. This ability to meet unexpected demand for labour highlights the crucial role private employment services can play in responding to crisis situations.

PRIVATE EMPLOYMENT SERVICES OFFER A WIDE RANGE OF HR SERVICES SO THAT COMPANIES CAN FOCUS ON THEIR CORE BUSINESS

A more complex and unpredictable environment leads companies to increasingly focus on their core business and to outsource some of their activities. To cover such activities, the private employment sector is diversifying its services and extending its role as a partner in employment markets beyond temporary agency work. The spectrum of HR services being offered by private employment agencies today extends to permanent recruitment and consulting services to outsourcing, outplacement and payrolling (see Figure 9). User companies also avail themselves of additional services from private employment services in order to increase the efficiency of their internal HR functions.

Figure 9a
Professional services offered provide added value to client (1/2)
In the USA, search and select services are the fastest growth area for the industry and now represent one quarter of all revenue (Figure 10).

**Figure 10**

**Search and select services growing faster than agency work**

US pre-crisis data

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**Figure 9b**

**Professional services offered provide added value to client**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>SERVICES OFFERED</th>
<th>VALUE-ADD FOR CLIENT</th>
</tr>
</thead>
</table>
| **OUTPLACEMENT** | Provide employment transition services to employees re-entering the job market | • Career transition consulting  
• Post job-loss training  
• Career management | • Put in professionals hands a career step that can be psychologically difficult  
• Give client’s people the right opportunities at the right time  
• Well managed outplacement has a positive impact on client’s reputation and public image |
| **PERMANENT PLACEMENT** | Recruitment services for permanent job openings | • Search and recruit  
– Generalists  
– Professionals specialists  
• Skills, capabilities and fit assessments  
• Hiring process management | • Extend client’s reach to talent pool  
• Reach specialists otherwise unreachable  
• Decrease a time and resource consuming activity  
• Ensure to make the right selection thanks to PrES screening and selection experience |

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1. Expressed in revenues – agency work includes billing of salaries of workers, place & search and outplacement only include fees.

Source: Staffing Industry Analysts.
The sector has the expertise to provide made-to-measure solutions to companies’ staffing needs and to work with them in managing complex workforce planning and risks. They can deliver solutions across all forms of contracts and provide tailor-made solutions that allow organisations to explore growth and new ventures while still protecting the core activities of the company.

**CASE STUDY 2: BULGARIA**

A German discount retailer planning to simultaneously open 15 outlets in Bulgaria called on a local private employment agency to recruit 400 staff. The project was completed in two months and delivered a solution that the client could not have fulfilled himself in the same timeframe.

The market expertise and “one-stop-shop” nature that private employment services provide are what appeals to companies. In these cases private employment services manage all administrative tasks and contractual obligations as well as ensuring compliance with local laws and regulations. This outsourcing of HR needs allows companies to concentrate on their core business.

**CASE STUDY 3: RELOCATION OF A MANUFACTURING PLANT IN CHINA**

The experience of a company having difficulty in recruiting blue collar workers in its plants in Beijing and Shanghai provides a good illustration of the added value services that private employment services can provide.

The company was facing challenges to recruit the labour it needed in order to meet the new demand and also to replace workers who had left. The labour market in both Beijing and Shanghai is very competitive, characterised by severe labour shortages and difficulty in enticing workers to move to the cities because of the high cost of living. In addition, operating costs in Shanghai are high for manufacturers, placing greater pressure on budgets and margins. China having experienced an average GDP growth of 8%+ pa over the past 10 years places enormous strain on HR departments and it requires strong local market knowledge to navigate the system.

In this case the company only had access to fragmented market intelligence and was facing high operating costs as well as high levels of worker attrition due to a less competitive remuneration package. The insights of the private employment services as to how to operate under the local regime and within a shifting regulatory environment can be invaluable to companies in such situations and help them to accelerate management of bureaucratic processes and understand the options open to them.
Having examined this specific situation the agency recommended that the company re-locate its plants to more labour intense cities. It dedicated a local expert to mapping the talent opportunities in 15 cities in China and over a period of just four months the expert mapped blue collar workers across the country and subsequently narrowed the choice to just six cities. The agency had established solid government relationships in each city which enabled it to collect accurate data and to present the company with a fully elabo-rate proposal.

It is noticeable how those companies that are least flexible in offering a wide range of employment contracts are also those with the lowest penetration of agency work. Companies in the Netherlands, UK, Belgium, France, Germany and Ireland have a relatively high degree of flexibility and also enjoy significant agency work penetration rates. By contrast, countries including Slovakia, Portugal, Romania and Hungary with highly inflexible national labour law, companies are left with a limited ability to leverage the advantages agency work can bring and results in correspondingly low levels of penetration.

Private employment services play an important role in supporting companies and acting as labour market intermediaries. The sector provides user organisations with access to an ever-expanding range of HR and employment services and a high level of local market knowledge and expertise.

Often, private employment services act as an agent to workers by helping them access the next assignment. Furthermore, many large corporations prefer to go through private employment agencies to avoid the often time-consuming recruitment process themselves. In India for example, 50% of attrition in the agency work sector is workers joining user companies on a permanent basis.

CASE STUDY 4: US – PRIVATE EMPLOYMENT SERVICES TAKE OVER CERTIFICATION AND SCREENING FUNCTION

A healthcare company requiring specific skill-sets in its clean production facility but finding a dearth of candidates, called on an agency for assistance. The agency created a full workforce solutions programme whereby it benchmarked the skills-set needed, created an 8-day training programme to develop the skills and developed a pipeline of high potential entry level operators.

Companies also turn to private employment services to help them manage complexity and risks in markets with which they are not familiar with. This enables them to be confident that they are operating to the highest standards as the industry is increasingly self-regulating and ensuring that all players meet a common level of professionalism.
CASE STUDY 5: INCREASING EFFICIENCY IN AUSTRALIA

A complete solution to increase the efficiency of the clients’ HR was created by a private employment agency in Australia, making it the largest and most complex outsourced contract and the first of its kind in the world. The agency introduced a new recruitment process to recruit all personnel for the user company and developed a collaborative organisation spread over 17 recruiting centres around Australia comprising more than 550 personnel.

The efficiency and quality of candidates delivered to the user company resulted in controlled costs, improved technology and the ability to innovate as well as the better alignment of responsibilities and more reliable management information.

PRIVATE EMPLOYMENT SERVICES ENABLE MORE JOB OPTIONS AND WORK OPPORTUNITIES FOR PEOPLE

Private employment services also help people to realise their diverse range of expectations regarding work. In a world where people live longer and because of reduced pensions may need to work longer, new attitudes and approaches to work are emerging. Workers are increasingly interested in new ways of working (combining flexibility and security) and want to organise their professional life in order to strike a better balance between work, leisure or family interests. Whether it is wanting to work part-time in order to care for family, students wanting to make some money over the summer or people wishing to devote more time to their personal interests, the trend points toward changing attitudes to work.

In the new reality of work, it should be recognised that an increasing range of work contracts is needed to meet diverse expectations and attitudes to work. In France, Belgium or Italy for example, there are currently more than 30 different types of work contract, reflecting increasingly diversified labour markets. In several countries, the private employment services industry is able to offer a wide range of contractual arrangements (specific temporary agency work contracts, fixed-term contracts, part time contracts, permanent contracts, apprenticeship contracts...), allowing it to serve a range of profiles and situations of people looking for work and skills development.

The variety of the agency workers’ profiles [see Figure 11] reflects people’s increasingly diverse attitudes towards work and expectations of it.

Global statistics reveal that an average of 30% of agency workers are not looking for a permanent job (in Japan this figure is 55%) while 43% of agency workers choose this type of work because they want to work in a flexible way (in Australia 80% of agency workers gave this as their reason for choosing agency work).

Meanwhile an average of 42% of people claim that they chose agency work as a means of gaining work experience – and this figure was over 70% in Belgium [see Figure 12].

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5 Source: Ciett National Federations
Adapting to change

The range of agency worker profiles increases labour market participation and diversity

Students
(make money to fund studies and/or vacations)

Workers reentering the labour market
(work as temps after period of unemployment/maternity leave)

Workers looking for a permanent job
(Second best choice but see agency work as stepping stone)

First time entrants
(enter the labour market and gain first work experience)

Flex Professionals
(not looking for a permanent contract)

Senior workers
(remain employed to get additional income)

Figure 12
Agency work is able to serve a very diverse set of motivations

People choose to work as a agency worker in order to...

% of respondents agreeing to the statement, 2009

- 65%
- 62%
- 63%
- 30%
- 23%

Average across countries

Source: Ciett national reports
Adapting to change

Private employment agencies recognise that a wide group of agency workers chooses their services often out of necessity rather than out of real choice, because they can’t access or remain in a permanent job. In that case, working through an agency might be a default choice, but the alternative is often undeclared work, unemployment or relying on the support of the welfare state. In France for instance, 40% of agency workers declare that they decided to work through an agency because they could not find a permanent job. However, 60% of them cite the possibility of finding a job quickly as their first reason for turning to agency work (See Figure 13).

For many the private employment services industry is the ideal partner to meet the needs of people looking for more individualised work solutions. It offers a wide variety of occupations in many different industry sectors, thereby providing workers with a great deal of choice and the opportunity to seek out employment in line with their interests and future development goals. In Australia for example, agency workers represent 12.7% of the mining industry workforce, 11.8% of workers in the finance and insurance sector and 11.6% of workers in the ICT industry6.

In many countries, agency work is increasingly recognised as a lifestyle choice and agency workers show high levels of satisfaction with the flexibility and work/life balance that agency work provides them. European research from the French bipartite institute L’Observatoire des Métiers et de l’Emploi showed that 83% of people in the UK and 76% in Poland would recommend agency work and more than 50% of workers in Belgium claim they have deliberately chosen agency work and that it offers diversified work (Figure 14).

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CHAPTER SUMMARY

In the new reality of volatile, unpredictable and complex labour markets, the need for private employment agencies to identify openings and manage the transition of workers is has grown significantly. The private employment sector offers an array of added-value services to help companies to adapt better and faster to economic cycles and to be able to focus on their core business. They reduce time-lag between recovery and job creation and increase the range of choices and work opportunities for people.
Chapter 2

Private Employment Services reduce both structural and frictional unemployment

“Employment services improve efficiencies by matching supply and demand.”

— Michael Weber, Economist, World Bank
Adapting to change

In Europe, as stated by EU Commissioner for Employment, Social Affairs and Inclusion László Andor, "some 20% of jobs are created or destroyed each year and depending on the Member State, up to 30% of all workers may be hired or leave their employers each year".

New technologies are creating new sectors which require new skills and jobs while others are disappearing and taking with them previously established employment sectors. At the same time the geographic shifts brought about by globalisation, trade liberalisation and population evolution are changing the importance and competitiveness of different countries and regions around the world, leading to pockets of high unemployment that coexist with areas where vacancies remain unfilled. Due to the demographic shifts, some countries will face aging populations, while others will experience a population boom leading to a mismatch of talent and employment opportunities around the world.

Sectoral shifts modify economies profoundly. In the developed world, jobs in agriculture and manufacturing are declining while demand for labour in the service and creative industries continues to rise. With the increased focus on IT and connectivity service workers today require a completely different skill-set from even a decade ago. As a result, both structural and frictional unemployment have been rising over the years, and particularly affecting young people. That picture is remarkably similar right across the globe, revealing a clear trend in more and less developed economies.

The private employment services industry contributes to reduce these two dimensions of unemployment: structural unemployment by creating new jobs and skills; and frictional unemployment by ensuring a better match between supply and demand of work and increasing transparency in labour markets.

As shown in Figure 15, the level of development of agency work and the unemployment rate follow inverse patterns.

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PRIVATE EMPLOYMENT SERVICES CREATE MORE JOB OPTIONS WITHOUT SUBSTITUTING PERMANENT CONTRACTS

The private employment services industry is an engine of job creation. In the USA, private employment services provided 401,000 jobs in 2010, the largest annual growth posted since 1994. Meanwhile in Europe, since the low point of the economic crisis in 2009, the sector has so far provided at least 900,000 new jobs on top of the 3 million agency workers that have remained employed throughout the downturn. This builds on the performance during the period from 2002 to 2007 when 1.3 million new jobs were created by the industry.

Private employment services are an engine of job creation and help to boost employment by turning available work into jobs. The sector creates jobs that otherwise would not exist and is particularly effective in placing disadvantaged and under-represented groups in society, thereby providing a way for them to start to access job markets and join the world of work.

The research underlines that 74% of user organisations would not consider hiring permanent workers as an alternative to taking on agency workers. In addition, 62% of the companies would choose internal flexibility solutions such as overtime or not to do the work if they had no access to agency work, resulting in a “no job creation” situation (Figure 16). The average length of assignments (around 3 months) and the high turnover of agency workers prove that these jobs are not substituting permanent ones, but correspond to new ones.

A similar survey carried out in Sweden backs up this analysis. Only 19% of respondents considered hiring a permanent employee to be a viable alternative to hiring an agency worker (Figure 17).
ENSURING A BETTER AND FASTER MATCH BETWEEN SUPPLY AND DEMAND

Key roles of private employment services lie in their matching function between supply and demand, and their delivery of greater transparency in labour markets. Private employment services have a tactical role in easing transitions and reallocations in labour markets. By successfully and intrinsically staying close to the workplace and understanding the market needs, they are able to match supply with demand in order to maintain people in work and drive labour market efficiencies.

In recent years the industry was therefore seen as a job creation engine in times of economic prosperity, interrupted only in times of severe economic crisis. At global level, the number of agency workers in 2010 increased by 10% compared with 2009, while in Europe the activity of private employment services is expected to head toward its pre-crisis level by the end of 2011 (Figures 18 & 19).

Private employment services actually start to create jobs even at low levels of GDP growth as illustrated by this longer term analysis of the Belgium marketplace where agency work can be seen to perform in line with GDP and begin significantly ahead of total employment (Figure 20). This has the effect of jump-starting the economy and delivering jobs ahead of the classic job creation curve. Almost 60% of Belgian workers of 45 years of age choosing agency work did so to use the industry as a stepping-stone to a permanent job10.

10 Federgon: 2011

Figure 17
Survey on alternatives to using agency work

<table>
<thead>
<tr>
<th>REASONS FOR HIRING AGENCY WORKERS</th>
<th>ALTERNATIVE TO HIRING AGENCY WORKERS</th>
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<tbody>
<tr>
<td>Special qualifications or expertise</td>
<td>Place order elsewhere</td>
</tr>
<tr>
<td>Finding substitutes</td>
<td>20%</td>
</tr>
<tr>
<td>Test if a new position is needed</td>
<td>Not do the work</td>
</tr>
<tr>
<td>Difficulties in finding staff</td>
<td>Move production abroad</td>
</tr>
<tr>
<td>Temporary peak in production</td>
<td>Take on fixed-term employees</td>
</tr>
<tr>
<td>Quick adjustment of workforce (size)</td>
<td>Take on permanent employee</td>
</tr>
<tr>
<td>Less administration</td>
<td>Do not know</td>
</tr>
<tr>
<td>Do not know</td>
<td></td>
</tr>
</tbody>
</table>

% of respondents agreeing

1. i.e. replacement for employees on leave – parental, sick, vacation etc

Source: personal inlytningen i sverige, En studie av 500 arbetsgivares anlitande av bemanningsföretag, Bemanningsföretagen/Alme ga
Adapting to change

Figure 18
2010 shows increase of agency workers in the world

Source: Ciett national reports; industry estimates; Analyst estimates; BCG analysis

Note: Some data points for individual countries are based on industry estimates; Aworker figures measured in daily average numbers [in full-time equivalents]

1. Consistent group with previous strategic report; includes Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, UK 2. Rest of the World includes Argentina, Australia, Brazil, China, Japan, Mexico, South Africa, South Korea, USA 3. 2009 data estimated for Spain 4. 2010 data estimated on the basis of available data and extrapolated to all other countries 4. Forecast base on analyst revenue estimates for the industry

Figure 19
Number of agency workers in Europe is expected to reach pre-crisis level in 2011

Source: Ciett national reports; industry estimates; Analyst estimates; BCG analysis

Note: Some data points for individual countries are based on industry estimates; Aworker figures measured in daily average numbers [in full-time equivalents]
The presence of private employment services helps to drive job creation as it enables organisations to manage workforce flexibility in line with fluctuations in economic activity. Those markets in which private employment services face overly strict regulatory conditions or are barred from operating in some sectors are ill-prepared to manage these fluctuations and leverage the opportunity they present. It is these same markets that have fared least well in the economic crisis – such as Greece, Spain and Portugal in Europe – and are experiencing the highest levels of unemployment, especially among young people.

An examination of those countries continuing to perform well in 2009 – including the Netherlands, Germany, Switzerland and Sweden – reveals that 75% of companies are using agency work to deal with fluctuations in demand caused by seasonality and economic cyclical.

The inclusion of agency work as a reliable, flexible staffing approach has also been invaluable in China where it has helped companies manage the hyper-growth experienced over the past ten years. Consistent GDP growth of 8% and above has meant that both established companies and new entrants have been faced with significant hiring requirements – often needing to hire thousands of employees at once. In a country where labour law is still not fully realised and the regulatory environment is relationship driven, agency work has supported over-stretched HR departments and facilitated widespread hiring. It has also used its relationships and knowledge of the local workforce and of the regulatory environment to accelerate bureaucratic processes and deliver swift solutions.
AGENCY WORK REDUCES UNDECLARED WORK

In addition to having a positive impact on employment levels, increased use of private employment services has the added advantage of reducing undeclared work in the economy by providing an organised and regulated form of flexible work. As shown in Figures 21 & 22, there is a strong correlation between the level of agency work penetration and the volume of illegal activities: Countries with a high penetration rate of agency work have lower levels of illegal economic activity.

The Italian labour market serves as an excellent illustration (Figure 23) for relationships with both undeclared work and unemployment. A steady decline in the unemployment rate can be seen from over 11% when agency work was legally recognised in 1998 to a low of less than 7% in 2007 when agency work penetration peaked at 1% of the job market. Furthermore the legalisation of agency work also coincided with a decreasing level of illegal work from 27% in 1998 to a low of 22% over the same period.

In India, where the labour market is highly fragmented and boasts some 500+ million workers, organised employment (based on formal, written employment contracts) has been stagnant for many years leaving unorganised employment (without written employment contracts or undeclared) that is responsible for some 80% of the workforce. By creating new, formal job opportunities each year, the private employment services industry plays a key role at institutional level in reducing both unemployment and undeclared work. For the workers, the industry provides
agency workers with decent work, safe working conditions and a reassurance that they will be paid. Rights such as social security which private employment services afford their agency workers are rare in India where some 350 million workers are not organised formally and so receive no such entitlements.

**Figure 22**

**Reduction in illegal economy relates to increase in agency work**

Increase in illegal economy, decrease in agency work in 2009 dues to the crisis

**Figure 23**

**Agency work helped reduce unemployment & illegal economy in Italy**

Agency work regulatory changes and their positive impact on level of unemployment and illegal economy
PRIVATE EMPLOYMENT SERVICES HELP TO IMPLEMENT ACTIVE LABOUR MARKET POLICIES AND COOPERATION WITH PUBLIC EMPLOYMENT SERVICES

Private employment services help to reduce structural unemployment by contributing to the implementation of active labour market policies and working in cooperation with public employment services. This cooperation ensures maximum efficiency in driving higher labour market participation rates and contributes to the inclusion of people formerly outside the labour markets (jobseekers, inactive, students).

Best practice examples exist across Europe and mark a growing trend (Figures 24 & 25). As of 2005, public employment services in France have been able to outsource placements to private employment services leading to 320,000 placements in 2010 and 2011. 170,000 of these placements were for special target groups including young people without qualifications and the long-term unemployed.

Figure 24
2005 reform ends public monopoly of job placement
Intervention of intervention of private employment agencies (PrEAs)

In Australia, the activities of public employment services have been totally outsourced to the private sector (Figure 26). In comparison with the situation before outsourcing, the current system is showing about three times the output performance at approximately one third of the cost.
Adapting to change

Figure 25

**PES and PrES in Netherlands formed partnership**

Characterization of the way from co-existence to co-operation and elements of today’s system

<table>
<thead>
<tr>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Phase 3</th>
<th>Phase 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>No cooperation</td>
<td>PES – PrES</td>
<td>PES take responsibility</td>
<td>Public-private cooperation anchored in policies</td>
</tr>
<tr>
<td>• PES and PrES coexist and target same population</td>
<td>• PES help companies in need during time of mass dismissals</td>
<td>• Government fully value PrES as part of the solution</td>
<td></td>
</tr>
<tr>
<td>• START (public temporary work organization is being founded</td>
<td>• Private mobility centers are being established in cooperation with PES</td>
<td>• Public-private cooperation mentioned in most labour market policies as a means of solving labour market problems</td>
<td></td>
</tr>
<tr>
<td>• START is operating as tripartite organization (representatives of employers organizations, union, and the government)</td>
<td>• PrES are involved in facilitating all these arrangements</td>
<td>• PrES are represented in labour market advisory board for government (RWI: Raad voor Werk en Inkomen)</td>
<td></td>
</tr>
<tr>
<td><strong>Elements of today’s cooperation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• PES execute speed dating sessions at PES locations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Specific projects are jointly created to help people about to become unemployed finding a new employer right away (from work to work constructions)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Youth unemployment pacts with municipalities including among others 2'500 PES-trainees and 1'500 “Learn-and-work-jobs”</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: ABU

Figure 26

**Full outsourcing of PES to PrES in Australia**

**SITUATION**

- The Australian labour market is characterized by low unemployment levels, but at the same time widespread skill shortages and a constantly growing proportion of highly disadvantaged and long-term unemployed job seekers
- The Australian government outsourced its complete public employment services to private and non-profit organizations
- Australia is the only OECD country with this kind of system (100% outsourcing)
- The outsourced “government funded employment services” include ~50'000 internal staff in about 3'500 locations
- The system of service outsourcing is building on a complex contractual relationship to avoid (among others) “cherry picking” of private agencies in terms of job seekers they chose to place
  - The more disadvantaged the job seeker, the higher the reward for the agency placing the person
  - There is a performance measurement system in place across the country
  - Not placing disadvantaged workers would result in a bad score of the respective agency which would result in the agency losing its license to operate as a government funded employment service

**RESULT**

- Job seekers see the system as complex due to the contractual agreements that are in-place, but clearly see and value the advantages and benefits arising for them
- Satisfactory levels in general are very high among all stakeholders and especially governments clearly value the efficiency of the system and the positive impact it has on the public budget
- Compared to the situation before outsourcing, the current system is showing about three times the output performance with approximately one third of costs
  - Australia among OECD countries with lowest level of public funding of employment services

**Approximate number of locations**

<table>
<thead>
<tr>
<th>Before outsourcing</th>
<th>Current system</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,000</td>
<td>3,500</td>
</tr>
<tr>
<td>2,000</td>
<td>600</td>
</tr>
<tr>
<td>0</td>
<td>60</td>
</tr>
</tbody>
</table>

In emerging markets such as India, where high levels of illiteracy (25% of men and up to half of the female population) make employability a significant problem, private employment services are serving a crucial role. They deliver the specialist knowledge needed to navigate the complex regulatory framework for organised labour with different labour compliance requirements across the country's 28 States and 7 territories, and no less than 22 recognised languages. As existing experiences show, one change in an organisation's social security scheme may require 26 different approvals and many multi-national companies find they don't have the knowledge or the connections to manage these complexities. With the often restrictive, outdated and only selectively enforced labour laws posing an added challenge, private employment services can help corporations to manage complex legal environments leaving them free to concentrate on their core business (see Figure 27).

Adding to its services, the sector can also play a role in integrating immigrant populations into the labour market as has been seen in Denmark where private employment services have provided a useful support to the public employment services by securing jobs for non-western immigrants who are traditionally hard to place.
CHAPTER SUMMARY

As a labour market intermediary, the private employment sector is able to better match supply with demand in the workplace by creating jobs, fighting undeclared work and reducing both frictional and structural unemployment. The industry supports governments in implementing active labour market policies, especially through cooperation schemes with the public employment services.
Chapter 3

Private Employment Services drive down segmentation in labour markets

“With private employment services, people have the chance to directly transfer into another fitting job assignment”

— Paul Ginocchio, Financial Analyst, Deutsche Bank
Adapting to change

AGENCY WORK FACILITATES TRANSITIONS AND UPWARD MOBILITY

Private employment services contribute to the elimination of market segmentation by facilitating transitions, upward and sideward mobility. These can be from education to work, from unemployment to employment, from temporary positions to permanent posts and from jobs to jobs. It also stays close to the workplace in order to enable transitions across sectors in line with demand and economic growth.

This stepping-stone function to the world of work helps to bring access to work for those who would otherwise not secure a job. By providing people with decent work and exposure to labour markets private employment services increase the wider employability and mobility of workers. They provide or facilitate both vocational and on-the-job training which can be used as a stepping stone to other work.

In France, just 11% of workers had jobs before they took up agency work, and this figure jumped to 66% working thanks to agency work. In Norway the percentage of people employed jumped from 16% to 65% due to agency work and in Sweden labour market participation rose from 34% to 85% (see Figure 28).

The same picture is replicated on an international level with South Africa showing just 15% of workers in jobs before accessing agency work and 61% afterwards (see Figure 29). Research carried out in several countries over time shows that on average one third of agency workers get a permanent job 12 months after entering a private employment agency.

Figure 28
Agency work provides a stepping stone into employment in Europe
By bringing people into employment agency work also reduces the segmentation of the labour market

1 Source Apso 2010
Adapting to change

Ciett national federations

Figure 29

In South Africa, agency work helps unemployed people to enter the labour market

Source: Ciett national reports 2009

The industry’s ability to identify new work opportunities also ensures that workers remain in ongoing work and that the provision of the skills training necessary for the jobs available serves to smooth the process for both employers and workers.

Some 35% of agency workers are under 25 years of age and agency work is often their first exposure to the labour market (Figure 30). It provides work experience for those entering the workplace and reassures them that they will be working with a quality employer and undertaking decent work. It also allows students to complement their studies by gaining concrete work experience.

This stepping-stone function provided by private employment services is largely recognised by workers, who widely acknowledge (from 59% to 92%) that agency work is an efficient way of finding a first job but also of securing a permanent, full time position (Figure 31).
Adapting to change

Figure 30
Agency work provides needed opportunity for young people

Source: Ciett national reports, Euromonitor

Several countries showing high satisfaction level with agency work

Source: Ciett national reports, Euromonitor

Figure 31
Stepping stone effect largely recognised by workers

Source: Regards croisés sur l’intérim, l’Observatoire des Métiers et de l’Emploi, July 2010

High perceived value of agency work both to get into the labour market and find a full-time job

Note: AW – agency work

Source: Regards croisés sur l’intérim, l’Observatoire des Métiers et de l’Emploi, July 2010
The impact of the stepping-stone effect is particularly important during times of recession when workers benefit from the opportunity to re-enter the job market after a spell of unemployment. A 2009 study carried out in the Netherlands by Marloes de Graaf-Zijl, Gerard van den Berg and Arjan Heyma finds that the probability of finding a job increases significantly if engaged in agency work and that this increases over time as user organisations appreciate the experience accumulated. The study also finds evidence that regular jobs found through agency work pay higher wages—providing further evidence of upward mobility. This study showed that some 80% of temporary agency workers move on to a permanent job within 12 months and the sector provides upward mobility in the workplace as they gain experience and expertise.

**PRIVATE EMPLOYMENT SERVICES INCREASE LABOUR MARKET PARTICIPATION AND DIVERSITY, LEADING TO MORE INCLUSIVE LABOUR MARKETS**

Through the stepping-stone effect agency work provides access to employment for many people and thereby increases labour market participation and reduces segmentation. Based on Ciett and The Boston Consulting Group calculations, in 2010 more than 12 million workers in Europe used the services of private employment agencies to enter the labour market, change jobs or move upwards towards permanent positions (see Figure 33).
Private employment services help to drive up labour market participation. They are not only agents of job creation but they also increase the range of job options being made available in the labour market. The sector is particularly effective in placing disadvantaged and under-represented groups of society such as youth, women and the long-term unemployed and providing a way for them to start to access the job market and join the world of work.

One of the many services private employment services offer to disadvantaged workers is facilitating access to the labour market (taking care of the job search function on behalf of the jobseeker), allowing employers to recruit these disadvantaged workers with a low risk (probation period) and offering contractual arrangements that meet the constraints of these workers [need to gain confidence again by working part-time or for a limited period of time to start with].

By reducing illegal work as well as unemployment and by providing work opportunities for people who are furthest away from employment, private employment services increase labour market participation and diversity.
In recent years, practices in Europe have demonstrated that tailor-made active labour market policies are needed to deliver high levels of labour market participation and so the role of the industry in driving up labour market participation is important and warrants further exploration.

In addition to bringing large numbers of people into the workplace, agency work has a positive impact on gender balance in some markets – particularly those with a higher share of service industries.

In Argentina, Japan, Sweden and the US for example, women represent just 43%, 42%, 48% and 47% respectively of the workforce as a whole but comprise 55%, 67%, 60% and 56% of the agency work market. In Japan especially, private employment services have helped women to enter a labour market that historically had been closed. Acting as intermediary, private employment agencies were regarded as socially acceptable. The sector therefore identified work opportunities and then provided skills training in order to equip and prepare women for the work available. The employability of women is key to addressing talent shortages in many countries. Given the shifting demographics women’s participation in the labour market will become increasingly important as the present economic lifestyle progresses.

In a number of developed economies – notably in Europe and Japan – the ageing population levels and tighter economic circumstances will require older workers to stay on in the workplace for longer. Projections made for the EU by Cedefop, the European agency for vocational training, show that by 2020 replacement demand (mainly due to retirement) will amount to 73 million jobs.

The share of older workers (50+) in agency work is increasing twice as fast as within the total employed population in some markets, although it is still currently under represented in the agency work industry (Figure 34).

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*Source: Ciett National Federations*

*Cedefop – Skills supply and demand in Europe - 2010*
Driving labour market inclusion will be an increasing challenge in the northern hemisphere which will face a lack of workers. Being able to retain and integrate older people into the workforce will be crucial and projects initiated by the private employment services in Germany, Spain and the Netherlands have successfully used focused selection and trainings in order to provide internships and ultimately employment contracts for workers of 50+. In Spain, more than 6,300 people over 45 have re-entered the labour market and in the Netherlands specialised branches cooperating closely with public employment services have succeeded in getting older workers back into employment.

Private employment services have a far broader citizen reach than public employment services. This is due to the industry’s extensive branch network (see Figure 35), number of devoted recruitment consultants and global presence.

The industry’s extensive network capacity is also used for particularly vulnerable groups such as war refugees (see Figure 36), and allows the industry to be well positioned to drive inclusive labour markets in the decades to come. Other examples of initiatives developed by the industry to help people being furthest away from the labour market include training projects to combat illiteracy, campaigns to fight discrimination at work, programmes to support ex-convicts to get a job, or the setting up of non-profit organisations aimed at improving the lives of socially excluded people and communities.

Figure 35
Private employment services have broader reach than public ones

![Bar chart showing comparison between Private Employment Services and Public Employment Services in terms of the number of branches per 1000 active citizens in various countries.](unnamed)

Note: Number of PES in the UK estimated based on available branches listing and cities sizes
Source: Ciett, OECD, National Public Employment Agencies, BCG analysis

Netherlands and UK, countries with high agency work penetration, showing densest private branch network
CHAPTER SUMMARY

With its stepping-stone function helping workers to enter the labour market and then to transition smoothly to ensure that they remain in employment, the private employment sector helps to drive inclusive labour markets and increase participation – particularly among the more disadvantaged groups in society. It therefore contributes to reducing segmentation.
Chapter 4

Private employment services contribute to matching and developing the skills needed in the labour market

“Private employment services ensure the selection process for the employees and ensure they have the right skills and abilities for the job”

— Philippe Haeberli, Head of technology and services, Swiss Post
MANAGING SKILLS TO DEAL WITH SEASONAL FLUCTUATIONS WITHIN SECTORS

Seasonal fluctuations have a high impact on many industries. The "classical" sectors experiencing fluctuation in demand on a seasonal basis and needing to adapt their staffing policies accordingly include:

- Financial auditing, which needs to staff-up during the reporting season;
- Postal Services and the Catering sector which experience a seasonal uplift over the Christmas period;
- Commerce and retail;
- Construction sector which experiences variations related to the weather and the changing seasons;
- Tourism, which experiences high and low seasons.

While demand often follows a predictable pattern, companies nevertheless need to manage this change every year and plan for increases and decreases in their workforce. Some organisations are able to adapt to these changes on their own by reallocating resources while others require external support in ramping up their workforce to cope with the busy periods [Figures 37 & 38].

Private employment services, with their access to a wide pool of talent and ability to train workers in the skills that employers need, are well placed to support companies in such periods. As proven by data, the majority of the jobs therefore created by the sector that the sector creates are not substitutes for permanent employment, but are true additional jobs that otherwise would not have existed.

Figure 37
Agency work addresses variability in demand
One illustration of this evidence is the fact that a significant part of agency work is drawn from the student population. Students are not looking for a permanent contract but for a couple of working hours on a weekly basis to get some money, combining it with first working experiences. The share of students within the agency workers population can be as high as 33% (as in Netherlands\textsuperscript{17}). In Belgium, agencies supplied 173,845 student jobs in 2010\textsuperscript{18}.

CASE STUDY 7: PRIVATE EMPLOYMENT AGENCIES AND SEASONALITY ON SWITZERLAND

Agency work is an important element of the construction sector in Switzerland, helping it to manage its strong seasonal variations in demand. At its peaks the industry employs some 340,000 people – an uplift of more than 10% (around 30,000) workers compared with quieter periods. Agency work penetration in the construction sector is 4.1%, compared with only 1.5% in the Swiss labour market as a whole. As such, the construction sector comprises some 19% of agency work assignments in Switzerland (See Figure 39).

\textsuperscript{17} Source Abu/Ecorys 2008
\textsuperscript{18} Source Federgon 2010
CASE STUDY 8: PRIVATE EMPLOYMENT SERVICES AND SEASONALITY IN THE NETHERLANDS

The Netherlands postal service experiences a surge in demand and mail volumes during the Christmas and New Year period and is not equipped to manage this extra workload by calling on its internal resources. The private employment services industry provides an extra 3,000 workers each year in order to boost capacity and enable it to meet the increased demand.

CASE STUDY 9: PRIVATE EMPLOYMENT SERVICES AND SEASONALITY IN THE BELGIUM

In Belgium the football season brings a significant increase in staff needed at the stadiums. An in-house solution developed by a private employment agency now trains staff at the start of the football season (in July). A dedicated person from the agency coordinates all training and is present at every match to ensure that all needs are being met.
DEVELOPING SKILLS NEEDED TO MEET SECTORAL SHIFTS

Global employment markets are facing an increasing demand for highly qualified people, with jobs increasingly requiring skills and higher or tertiary education. This request for higher skilled workers also reflects the sectoral shift taking place in many developed countries, where economies are turning more and more into services.

At EU level, Cedefop predicts that between 2010 and 2020, further substantial decline in employment in primary industries is projected [with a loss of around 2.5 million jobs, especially in agriculture]. Job losses [around two million] are also expected in manufacturing and production industries. The main areas of employment growth are in services, especially marketed services and business, and other services are projected to see a growth of around seven million jobs.

As a result, across the EU 27, workers with professional qualifications will comprise more than 31% of the employed population in 2020 compared with 27.7% today. Meanwhile the percentage of workers with low qualifications in 2020 will be just 19% compared with over 28% in the year 2000 (Figures 40 & 41).

![Increase in demand for highly qualified jobs will continue](image)

**Figure 40**
Increase in demand for highly qualified jobs will continue
Forecast for Europe until 2020

PrES help Swiss construction companies to overcome economic barriers linked to strong seasonality

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19 Cedefop – Skills supply and demand in Europe - 2010

Note: EU 27+ = EU27 + Norway + Switzerland
Source: Cedefop 2010, Skills supply and demand in Europe, Medium term forecast up to 2020
The private employment services sector is well placed to support this structural shift and deliver the skills needed in two ways. Firstly by helping workers to move from declining sectors to in-demand sectors.

Indeed, the activities of private employment services not only reflect but also help economies to adapt to sectoral shifts. As an illustration, the percentage of agency workers placed in service industries has risen some 10% in the past ten years in France, while numbers of agency workers assigned in the manufacturing industries decreased significantly (see Figure 42).

Figure 41
Europe will need more high-skilled workers for non-manual positions

Figure 42
Use of agency work in services sector growing in France
To accompany this shift to more services-oriented economies, demand for higher skilled workers is increasing. Private employment services have proven successful in meeting the demand caused by shifts in sectors. In the USA, the professional sector (i.e. higher skilled agency workers) has seen significant growth and now accounts for 55% of the staffing market compared with just 36% back in 1995 (see Figure 43).

Private employment services have the ability to assign workers to economic sectors where the skills demand might be higher. In France, over a 20-month period (from March 2009 to November 2010), one third of surveyed agency workers employed in the manufacturing sector have moved into other sectors, mainly into services (Figure 44).

The second contribution of private employment services to address the mismatch of skills and to plug the talent gap is training. The private employment services sector is well placed to support this need for greater vocational training and upgrading of skills. In Europe, in addition to the substantial training schemes directly developed by private employment agencies, the industry has also set up sectoral bipartite managed training funds in 7 countries (Belgium, France, Luxembourg, Netherlands, Italy, Spain and Austria) to facilitate access to vocational training for agency workers. More than €500 million is invested every year by these training funds in schemes specifically designed for agency workers. (Further reference to training funds is made in Chapter 5).
Training lies at the very core of the sector and is central to its role in meeting demand with supply in employment markets. The industry stays intrinsically connected to the workplace and best placed to understand the changing needs of employers and employees, thereby enabling it to step in and train workers to meet these needs. By acting as an agent to workers it helps them to access the next assignment and ensure that they can transition easily to further employment. Vocational training for agency workers is demand driven, in unison with the labour market’s need and organised in close cooperation with user companies with a short term and pragmatic approach catering especially well to lower skilled workers.

As the data reveals, agency workers receive more training than fixed term workers and regularly undergo training to find new job opportunities (Figure 45). Due to the heavy representation of younger people in private employment services, 70% of agency workers undergoing training are younger than 35 whereas only 50% of permanent workers trained fall within this age bracket.

Private employment services go above and beyond other employers by providing constant skills training to ensure that their workers are equipped to meet the needs of employment markets. The correlation between acquired skills and employability stands more than ever and is a key indicator to avoid long bouts of unemployment and better transition to new employment opportunities.
INCREASING SKILLS MOBILITY TO ADDRESS DEMOGRAPHIC CHANGES

The coming decades will see an increasing global mismatch of talent and employment as aging populations in some parts of the globe are balanced by newly emerging economies in other regions. The northern hemisphere will experience a significant talent shortage with the USA needing an extra 25 million workers by 2030 in order to sustain economic growth, while Europe will need 35 million extra workers by 2050. Meanwhile, in many southern hemisphere countries, there will be workforce surpluses, with a projected 45 million new entrants in global job markets each year. This will be compounded by a talent gap in developing countries with untrained workers available (see Figure 46).

Private employment services increase mobility in the labour market and in doing so help to meet the diverse needs of labour markets. Thanks to their global presence and network of branches all around the world, they can deliver geographic mobility and organise work migration in a secure way.

Through their extensive knowledge of local labour markets, private employment services are able to source existing talent in almost any country and arrange for these workers to work abroad. They provide this service swiftly and if the workers do not have all the skill sets needed they will arrange for immediate training to bring them up-to-speed. The ability to provide mobility across geographies is well illustrated by the case of the private employment services in Poland supplying skilled workers to Norway (Figure 47).

CHAPTER SUMMARY

With training as a central core of the private employment services model, the sector ensures that workers have the skills needed to meet the job opportunities in the marketplace. With emerging technologies and the increasing need for a skilled workforce, the sector can play a crucial role in matching supply with demand and closing the skills gap across sectors and geographies.
Adapting to change

Figure 46

Increasing demand for matching labour needs
Aging of population and talent gap foreseen as major shifts

- Increasing talent shortages occurring in the Northern hemisphere
- 35 million extra workers needed in the US by 2030 to sustain economic growth
- Elderly dependency rate to double by 2050 in most G7 and all BRIC countries
- 45 million new entrants in global job market annually. Most of them young and from developing countries.
- Only 25% of Indian and 20% of Russian professionals currently considered employable by multinationals
- Workforce surpluses in many Southern hemisphere countries
- Employability will continue to be a huge problem worldwide
- Only 25% of Indian and 20% of Russian professionals currently considered employable by multinationals
- Increasing global mismatch

Source: WEF 2011, Global Talent Risk - Seven Responses, Cedefop, Eurostat, European Council

Figure 47

PrES source and develop skills abroad to match demand
Example: Private employment agency’s campuses in Poland to supply Norwegian market

Private employment agency’s campuses in Poland

- Agency is operating two recruiting and training campuses in rural areas in Poland specifically to serve the Norwegian labour market
- Intensive screening and recruitment process takes place within these facilities
- Following training & support programs within the campuses reach from 2-5 months language courses over cultural and job specific training to administrative support regarding the assignment

CONSTRUCTION WORKERS

<table>
<thead>
<tr>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Norwegian market is characterized by low unemployment rates which leads to underrepresentation of different skill sets in the Norwegian labour force</td>
</tr>
<tr>
<td>In contrast many rural areas in Poland are facing high unemployment and have a large population of skilled workforce especially in the construction environment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Through the facilities in Poland skilled workers are being identified, recruited and extensively trained (e.g. language)</td>
</tr>
<tr>
<td>Workers receive further job specific training in Norway</td>
</tr>
<tr>
<td>The overall involvement supports work mobility and perfectly matches different supply &amp; demand situation across borders</td>
</tr>
</tbody>
</table>

PRE-SCHOOL TEACHERS

<table>
<thead>
<tr>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Until recently, about 60% of children in Norway got a place in one of the countries pre-school facilities</td>
</tr>
<tr>
<td>The Norwegian government recently introduced a guarantee for every child to get access to such an institution</td>
</tr>
<tr>
<td>This in turn lead to a significant lack in qualified pre-school teachers in Norway</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Through the campuses in Poland, qualified educational staff is being recruited to fill the gap in the Norwegian pre-school teaching environment</td>
</tr>
<tr>
<td>Extensive training programs needed to cope with local requirements (language, knowledge of local culture, etc.)</td>
</tr>
<tr>
<td>After first suspiciousness within the Norwegian population, this practice is now fully established and valued by all parties</td>
</tr>
</tbody>
</table>

Source: Norwegian national federation (NHO Service), expert interviews, press research
Chapter 5

Private employment services deliver decent work

“Private employment services are often very valuable for workers in terms of the opportunities offered and the possibility to gain experience,”

— John Martin, OECD Director for Employment, Labour and Social Affairs
Those forms of labour contractual arrangements which are not properly regulated or can easily be misused (e.g. bogus self-employment, civil contracts, subcontracting), can lead to low quality jobs and malpractice. By principle, flexibility provided by private employment services should be seen as an embodiment of decent work, far away from the debate on indecent or precarious work.

In its Decent Work Agenda, the International Labour Organisation (ILO) identifies four strategic goals:

- creating decent and productive employment;
- promoting access to social protection systems;
- respect for core labour standards;
- stronger dialogue between the social partners.

The assessment of these goals leads to the conclusion that appropriately regulated and organised private employment services contribute to decent work. Indeed when compared with other forms of external flexible work (fixed term contracts, on-call work, outsourcing, self-employment, undeclared work), agency work provides clear advantages.

While the cited forms of labour relations allow for agreeable conditions to varying degrees, no other form of flexibility than agency work provides the same level of benefits to both organisations and workers than agency work. The unique nature of private employment services is related to their intermediary function in labour markets and the triangular relationship between the employee, the user organisation and the agency on which it is based.

The triangular relationship is a widely accepted form of employment relationship and is officially recognised by the EU with Directive 2008/104/EC on temporary agency work as well as by the ILO with its Convention on private employment agencies (n° 181). In this relationship, the private employment agency remains the employer of the agency worker, who is place at work in the user company under the supervision of the user company. As a consequence:

- The private employment services industry is a fully fledged sector of the economy, being able to negotiate employment and working conditions for both its permanent and temporary workers;
- The private employment services industry is committed to social dialogue and collective bargaining as a way to regulate the sector;
- Private employment services’ interests are heavily aligned with those of the workers; they have a common interest in developing modern social protection schemes that fit with the specific nature of agency work;
- The private employment services industry is calling for appropriate regulation to be adopted for its sector (in countries where such regulation does not exist yet) and keeps on promoting enhanced quality standards as a way to fight against rogue and unethical agencies that harm the image of the sector and lead to unfair competition and social dumping.
AN INDUSTRY COMMITTED TO SOCIAL DIALOGUE

The private employment services industry is an economic sector on its own thanks to the triangular relationship that exists between an agency, a user-company and a worker (who is the employee of the agency). As such, the industry differentiates itself from other forms of employment and is recognised as a fully fledged sector of the economy by international regulatory organisations such as the International Labour Organisation (ILO) as well as the European Union (EU). At global level, the ILO has adopted a dedicated Convention (n° 181) on private employment agencies and a supplementary Recommendation (n°188). At the EU level, a Directive on temporary agency work was adopted in 2008, with the deadline for implementation set at December 2011. In addition, the European Commission has officially recognised agency work as a sector on its own: the industry formed a sectoral social dialogue committee with its trade union counterpart in 1998 and is currently one of the 40 sectoral social dialogue committees operating at EU level.

Because agency workers are the employees of the private employment services (whether temporary or permanent), the sector is in a position to negotiate their employment and working conditions. Where relevant, these employment and working conditions are negotiated with trade unions as the agency workers’ representatives. Therefore, as the only form of flexible work organised as a sector on its own, the industry itself has concluded a large number of collective labour agreements with trade unions at national level to advance the rights of agency workers, especially in Europe (see Figure 48). In Japan, the Japanese Staffing Services Association (JAS-SAl) signed a joint declaration with Rengo, the Japanese trade union confederation in 2010 on how to improve the treatment of agency workers and promote fair practices within the industry.

CASE STUDY 10: SOCIAL DIALOGUE IN ACTION IN SOUTH AFRICA

The South African Confederation of Associations in the Private Employment Sector (CAPES), has entered into a Memorandum of Understanding (MOU) with The Federation of Unions of South Africa (FEDUSA), the second largest trade union federation in South Africa. The MOU addresses the need to understand the barriers to social dialogue within the agency worker environment. Part of this pilot included access to union membership for more than 800 agency workers – who all receive full benefits of membership – for 12 months paid for by CAPES. The MOU also created a dedicated call centre for agency workers, that cater for agency workers across the country who require advice and assistance about their rights. Social partners continue to meet on a monthly basis to find ways to engage (agency and union) effectively and to find solutions to the issues raised by agency workers through the call centre.
These collective agreements, leading to higher levels of protection for the agency workers, can include better access to vocational training, complimentary health insurance or pension schemes, health & safety at work and extra social benefits. They can be negotiated at cross-sectoral level (between national social partners), sectoral level (between social partners of the agency work industry), agency work level (between a private employment agency and trade unions established in the premises) or at user company level.

In several European countries, jointly managed bodies have been established by the industry’s social partners to improve the employment and working conditions of agency workers (see Figure 49).
In countries like France (Figure 50), the Netherlands (Figure 51), Italy (Figure 52) and Belgium (Figure 53), these bipartite funds deliver a full range of services and benefits to improve the security of agency workers.

**Figure 50**

**Social partners’ bipartite bodies in France for the agency work industry**

- **Training (FAF-TT)**
  - Budget: €150 million
  - Mission: To facilitate access to training for agency workers
  - Nbr agency workers concerned: 40,700 in 2010

- **Social Fund (FASTT)**
  - Budget: €44.8 million in 2010
  - Mission: To provide additional benefits to agency workers regarding access to housing, credit, childcare, car rental, complementary health insurance...
  - Nbr agency workers: 129,000 in 2010

- **Compliance (CPPNTT)**
  - Budget: €44.8 million
  - Mission: To inform about and to stimulate compliance with existing legislation and CLAs for AW

- **Welfare & Pension (REUNICA)**
  - Mission: To provide welfare and complementary pension schemes to agency workers
  - Nbr of affiliated agency workers: 50,000 in 2009

- **Inclusion (FPE-TT)**
  - Budget: €15.5 million
  - Mission: To facilitate professional inclusion of agency workers
  - Nbr agency workers concerned: 40,600 in 2010

- **Research (OME)**
  - Budget: €700,000
  - Mission: To commission surveys in order to increase the understanding of the AW industry

- **Health & Safety (CPNSST)**
  - Mission: To provide complementary instruments and information to agency workers on health & safety
### Social partners' bipartite bodies in the Netherlands for the Agency Work industry

<table>
<thead>
<tr>
<th>Agency</th>
<th>Budget</th>
<th>Mission</th>
<th>Number of Agency Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRAINING (STOOF)</strong></td>
<td>€2.6 million</td>
<td>Professionalise vocational training and career development for employees &amp; improve mobility of agency workers</td>
<td>23,120 in 2010</td>
</tr>
<tr>
<td><strong>SPECIAL FUND (SFU)</strong></td>
<td>€5 million (0.2% from wages)</td>
<td>Providing additional benefits to agency workers regarding access to housing, credit, childcare, holidays...</td>
<td>168,271 (active) and 446,039 (inactive) in 2010</td>
</tr>
<tr>
<td><strong>CLA POLICE (SNCU)</strong></td>
<td>€2.1 million</td>
<td>To stimulate compliance with existing CLAs for AW through enforcement as well as advice and educate on the application of the CLAs</td>
<td></td>
</tr>
<tr>
<td><strong>HEALTH &amp; SAFETY (STAF)</strong></td>
<td>€900,000</td>
<td>To provide complementary instruments and information to agency workers on health &amp; safety</td>
<td>211,000</td>
</tr>
<tr>
<td><strong>PENSION (STIPP)</strong></td>
<td>€900,000</td>
<td>To provide complementary instruments and information to agency workers on health &amp; safety</td>
<td>211,000</td>
</tr>
<tr>
<td><strong>SELF-REGULATION (SNA)</strong></td>
<td>€1.2 million</td>
<td>To deliver quality certificates to TWAs and carry out compliance audits</td>
<td>2,400 agencies with certificate, 4,700 inspections carried out in 2010 and 322 companies removed</td>
</tr>
</tbody>
</table>

### Social partners' bipartite bodies in Italy for the Agency Work industry

<table>
<thead>
<tr>
<th>Agency</th>
<th>Budget</th>
<th>Mission</th>
<th>Number of Agency Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRAINING (FORMATEMP)</strong></td>
<td>€110 million</td>
<td>To facilitate access to training for agency workers</td>
<td>138,000 in 2010</td>
</tr>
<tr>
<td><strong>SPECIAL FUND (EBITEMP)</strong></td>
<td>€7 million</td>
<td>To provide additional benefits to agency workers in inclusion, health, health and safety, access to credit, childcare, ...</td>
<td>6,978 in 2010</td>
</tr>
<tr>
<td><strong>PENSION (FONTEMP)</strong></td>
<td>€13 million</td>
<td>To provide complementary pension benefits to agency workers</td>
<td>4,978 in 2010</td>
</tr>
</tbody>
</table>
Through social dialogue, employers and trade unions of the private employment services industry work together to deliver decent jobs, high levels of social protection and a well trained workforce.

AN INDUSTRY DRIVING SOCIAL INNOVATION

The three-cornered model of agency, user-company and worker that defines private employment services is a driver of social innovation as it provides each party with ownership and a clear role.

The industry has contributed to setting up new ways to secure social protection for workers under labour relations that are different from permanent contracts. In several countries, the industry has developed schemes to ensure the portability and transferability of the agency workers’ rights (health insurance, complimentary pension schemes, and training).

Indeed, the interests of private employment services are intrinsically aligned with those of its workers because as the industry will only benefit when its workers are employed in safe, secure and fair working environments. With the recognition of the value of the human capital, private employment agencies are looking to expand their investments in training and skills development of their workers in order to maintain and increase their employability.

In recognition of its capacity for social innovation, public authorities have involved the industry in organising new forms of labour contractual arrangements such as the “Portage Salarial” system.
Adapting to change

I

in France (providing an administrative platform for independent contractors – see Figure 54) and the voucher system in Belgium (for workers providing individual services in private households – see Figure 55). In both these cases the industry’s expertise and knowledge has been put to best use to develop a new form of employment relationship and to fight illegal work.

Figure 54

PrES industry driving social innovation
France: In 2010, about 20’000 independent contractors worked under “portage salarial” scheme

The French “portable salary” scheme which took place in 2010 is a key example of social innovation enabled by the industry. Some 20,000 independent contractors worked under the innovative scheme based on the original three-party model which enabled them to find their own projects and negotiate their fees while being able to outsource the administration and having the security of the employment status that enabled them to concentrate on the core task. The client continued to pay fees to the agency as agreed by all three parties while enjoying a flexible employment solution that brought few administrative costs and social charges. The agency, as negotiator of the contract, took care of all administrative matters and maintained contact and relationships with both other parties.

Private employment services also played a central role in the innovative voucher system developed in Belgium for self employed cleaning workers. The system allows users to buy up to 500 vouchers per year which are tax deductible and can be used to hire workers to clean their home.
A voucher system for self-employed cleaning workers

PrES play a central role in this innovative system created and implemented in Belgium

1: 70% of workers go through commercial agencies dominated by PrES. The other 30% go through social action centres, communal centres, physical persons and local PES

2: Except certain groups who can get up to 2.000 vouchers per year (single parent families, handicapped persons, ...)

Source: Onem, Federgon, 2010

Advantages for the user
- Fulfil a need of users
- Tax deductible vouchers
- Trust and transparency provided by agency intermediary without administrative hassle
- Diminution of risks (legal, social)

Role of PrES
- PrES do all the administrative handling and employ the workers
- Through extensive experience and network, PrES ideally positioned to play the agency role
- PrES companies recognition bring trust and reliability to the system

Advantages for the worker
- The worker is hired by the agency and get an official working contract
- Transparent salary
- Socially protected (i.e. insurance, retirement benefits, ...)

The government is planning to widen this system to other activities than cleaning but at a controlled pace

1: 70% of workers go through commercial agencies dominated by PrES. The other 30% are social action centres, communal centres, physical persons and local PES

2: Except certain groups who can get up to 2.000 vouchers per year (single parent families, handicapped persons, ...)

Source: Onem, Federgon, 2010

The voucher system is a great success in Belgium

97 million vouchers reimbursed in 2010

- 143,950 active workers in 2010
- 2,499 authorized agencies in 2009
- 97 million vouchers reimbursed in 2010
- Reduce unemployment and provide stepping stone to permanent employment
- Avoid illegal labour and abuses – 67% of users were using illegal labour before this system existed

The government is planning to widen this system to other activities than cleaning but at a controlled pace

1: 70% of workers go through commercial agencies dominated by PrES. The other 30% are social action centres, communal centres, physical persons and local PES

Source: Onem, Federgon, 2010
The agency handles all the administration and matches user with worker and the worker gets an official working contract, a transparent salary and a range of social protection benefits including insurance and pension. The system has been an astounding success with 97 million vouchers reimbursed in 2010. It has reduced unemployment by employing 143,950 active workers in 2010 and brought workers out of the black economy and into the system where 67% were previously working illegally. (Figure 56)

**A SECTOR PROMOTING THE NEED FOR PROPER REGULATION AND ENHANCED QUALITY STANDARDS**

As responsible employers, the reputable private employment agencies call for proper regulation of their services to be adopted and also promote enhanced quality standards. They commit themselves to a transparent and sound governance of the industry, with a global confederation (Ciett) and regional ones (Eurociett, Northern and Southern AsiaCiett, CLETT&A, North America, Africa and Near East) representing the interests of the sector.

Ciett works closely with the ILO, the International Organisation of Employers and global trade unions to promote further ratification of Convention n°181 on private employment agencies. Ciett also adopted a Code of Conduct many years ago to which all of its members adhere.

In addition, the industry has developed specific tools to ensure that quality standards and regulation (whether by law or collective bargaining) are being enforced: In France (CPPNTT), Belgium (CNT) and the Netherlands (SNCU and SNA), bipartite bodies are in place to monitor and ensure compliance with existing regulation on agency work. In Belgium and Portugal, an Ombudsman office has been established to deal with complaints from agency workers and to look for remedies. In Sweden and the Netherlands, where no licensing schemes exist, a certification system is in place to check conditions under which private employment agencies operate.

Most national associations of private employment services have adopted their own code of conduct, code of practices or quality norms [see Case Study 10].

**CASE STUDY 10: SELF REGULATION IN THE UNITED KINGDOM**

The Recruitment and Employment Confederation in the UK has a code of professional practice to ensure standards of quality in the industry. It has used a self-assessment questionnaire since 2007 to monitor compliance and leading to a major review of all compliance activity in 2011. Internal inspectors conduct regular inspections to ensure that members meet standards and any infraction is required to be rectified within six weeks if the organisation is to retain its place in the REC online directory.
Adapting to change

AGENCY WORK PROVIDES CLEAR ADVANTAGES OVER OTHER FORMS OF FLEXIBILITY

Contracts such as on-call work, outsourcing, fixed-term contracts and self-employment can all be used to provide flexibility in the marketplace and have a role to play. They also provide benefits to varying degrees but no other form of flexibility provides the same level of benefits to both employers and workers as agency work:

- Fixed term contracts provide no prospect of ongoing work or assistance in finding another job and offer limited training opportunities;

- On-call work happens at short notice with high uncertainty and little protection or support in finding future work and it makes it difficult to secure other work to plug the gaps. For user organisations on-call work provides no support to manage the search and administrative processes;

- Outsourcing provides limited career building opportunities or relationship with the user organisation although it does deliver the same benefits as for full time employees. For user organisations there is only limited contact with or control over the employee;
Adapting to change

- Self-employment offers no access to social benefits and training provided by agency work and little access to clients or prospects, and for companies it can raise compliance concerns and bring lack of quality control, especially for lower skilled workers;

- Illegal work is extremely precarious and offers no access to benefits or protection and no legal status. Employers using this type of work are clearly operating outside the law and opening themselves up to a range of risks.

When questioned about the added value of agency work, user organisations make reference to both a higher degree of flexibility (76%) and a much faster hiring process (47%) compared with fixed term contracts. They cited similar advantages over independent and self-employed contracts, also pointing out better regulatory compliance (35%) and the larger portfolio of skills available (19%) – see Figure 57.21

AGENCY WORKERS’ HIGH LEVEL OF SATISFACTION REFLECTS DECENT WORKING CONDITIONS

While private employment services meet the needs of user companies, evidence shows that they also suit the aspirations of workers too. High levels of satisfaction are recorded among agency workers and it data shows that the stepping-stone function provided by the sector meets the needs of a growing number of people.

The private employment industry also manages the task of finding work. It has a job already lined up when the current position ends and vows to ensure that the worker remains in employment throughout. It identifies where skill-sets will be needed in the future and provides training and skills enhancement to equip the workers to carry out the jobs identified. This ensures that workers keep their skills up-to-date and increases the worker’s chances of finding ongoing employment. Private employment services act as “career agents” to the workers and provide them with guidance on how best to start and build their professional life.

In many countries, agency work is today recognised as a lifestyle choice and agency workers show high levels of satisfaction with the flexibility and work/life balance that agency work affords them. Research from the French bipartite institute L’Observatoire des Métiers et de l’Emploi showed that in France over 90% claimed to be satisfied with both the interest of the work and the quality of the relationship with the agency, and 89% satisfied with the work/life balance they had achieved (Figure 58).

In Belgium, among senior workers the satisfaction levels are equally high with 91% of senior agency workers saying they would recommend agency work to a person of their age (Figure 59).22

As the research reveals, a real irony lies in the seeming mismatch between the perceptions of those working in the agency work industry and those observing it. While 91% of people employed in agency work in France have a positive impression of the work, only 69% of workers employed in the private sector have a similar view, with a significant percentage being wary of

21 Source: BCG Survey 2011
22 L’Observatoire des Métiers et de l’Emploi - April 2011
Figure 58

**Satisfaction among agency workers is very high**

**HOW SATISFIED ARE YOU OF YOUR AGENCY WORK EXPERIENCE WITH REGARD TO...**

- Work interest: 72%
- Quality of the relationship with your temporary agency: 91%
- Your work life balance: 86%
- Time lag between projects: 81%
- Salary: 79%

Source: Regards croisés sur l'intérim, l'Observatoire des Métiers et de l'Emploi, April 2011

**Figure 59

**Agency work serves the needs of older workers well**

Example: Belgium

**HOW SATISFIED WIL YOUR AW EXPERIENCE ARE YOU?**

- 40-49 years old: 79%
- 50-53 years old: 92%
- 54-57 years old: 86%
- 58-90 years old: 72%

**91% of senior agency workers would recommend agency work to a person of their age**

Source: Les travailleurs intérimaires âgés de plus de 45 ans – Federgon and IDEA consult – July 2004
agency work. This statistical anomaly can largely be explained by misconceptions surrounding the industry and its workers. The industry embraces such data as an invitation to bring greater understanding to governments, companies and citizens as to the role of the private employment services in well functioning labour markets and the place for agency work in supporting organisations in times of structural change.

CHAPTER SUMMARY

Agency work is the most secure form of external flexible work and is appreciated by both those who work in it and the companies that use it to manage their staffing needs. Private employment services provide decent work and are committed to negotiate with trade unions to find innovative solutions that meet the needs of workers, organisations and society.
Chapter 6

Efficient labour markets need relevant regulation of private employment services

“As a specific service provided by private employment agencies, if regulated appropriately, temporary agency work contributes to improved functioning of labour markets, fulfils specific needs for both enterprises and workers, and aims at complementing other forms of employment”

— Points of Consensus of ILO Workshop to Promote Ratification of the Private Employment Agencies Convention (2009)
To maximise the benefits of private employment services in delivering greater labour market efficiency, an appropriate regulatory framework must be in place. Private employment services are already a “highly regulated industry” in many markets around the world, with in some cases a mix of legislation, collective labour agreements and self-regulation\(^{24}\). In some other countries, the industry is still at an early stage of development, and proper regulation needs to be adopted in order to ensure all rights are enforced and to gain social acceptance for this form of work (Figure 60).

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### RELEVANT REGULATION ON PRIVATE EMPLOYMENT SERVICES SHOULD BALANCE FLEXIBILITY WITH SECURITY

The sector itself recognises that an appropriate and balanced regulatory framework is an essential pre-requisite for the acceptance and the sound development of the industry. For this reason the industry is very supportive of international instruments that provide guidelines to regulate private employment services, such as the International Labour Organisation’s Convention 181 on private employment agencies and its accompanying Recommendation n°188. Ciett is working jointly with all relevant stakeholders (ILO Office in Geneva, the International Organisation of Employers and global trade unions) to promote further ratification of Convention 181.

At EU level, Eurociett is fully supportive of Directive 2008/104/EC on temporary agency work that has established the principle of equal treatment between an agency worker and a permanent worker in the user company and a clear recognition of the role social partners can play in regulating the sector through collective labour agreements.

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\(^{24}\) Cf. Eurofound report on "Temporary agency work and collective bargaining in the EU", 2008

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<table>
<thead>
<tr>
<th>Social development</th>
<th>Regulatory development</th>
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<tbody>
<tr>
<td>Illegality grey zone</td>
<td>No regulation</td>
</tr>
<tr>
<td>Legal recognition</td>
<td>Coercive regulation</td>
</tr>
<tr>
<td>Social tolerance</td>
<td>CLAs in addition to existing law</td>
</tr>
<tr>
<td>Normative acceptance</td>
<td>Lifting restrictions</td>
</tr>
<tr>
<td>Societal acceptance</td>
<td>Social partners to define regulation</td>
</tr>
<tr>
<td>Full recognition</td>
<td>Appropriate regulation</td>
</tr>
</tbody>
</table>

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**Agency work markets tend to go through stages of development**

**THE TIMELINE EVOLUTION OF AGENCY WORK ACCEPTANCE**

- **Social development**
  - Illegality grey zone
  - Legal recognition
  - Social tolerance
  - Normative acceptance
  - Societal acceptance
  - Full recognition

- **Regulatory development**
  - No regulation
  - Coercive regulation
  - CLAs in addition to existing law
  - Lifting restrictions
  - Social partners to define regulation
  - Appropriate regulation

---

**Source:** Ciett
In this context, achieving an appropriate balance between flexibility and security is key if the potential of the industry to increase labour market efficiency is to be realised for the benefit of all actors involved.

An effective regulatory system needs to maintain flexibility for all parties – enabling companies to respond quickly to changing economic circumstances and allowing workers to achieve the work/life balance they desire. It also needs to provide a level of security for both parties: companies require legal security when contracting flexible work and access to skills while workers demand work security, continuity of rights between assignments and the possibility to maintain and develop employability.

In conjunction with Ciett, The Boston Consulting Group developed three key instruments in order to come up with recommendations on the correct level of regulation, drawing on a Regulatory Efficiency Index on private employment services, a Labour Market Efficiency Index and a Country Cluster analysis.

PRIVATE EMPLOYMENT SERVICES ONLY CONTRIBUTE TO BETTER FUNCTIONING LABOUR MARKETS WHEN APPROPRIATELY REGULATED

To assess the regulatory environment and the different areas of private employment services development, the Boston Consulting Group and Ciett devised the “Private Employment Services Regulatory Efficiency Index” aimed at assessing the degrees of flexibility to operate and security for workers.

The outcome of the index is calculated using 10 dimensions of development, each further divided into specific criteria to assess the level of development of each indicator in the country. Each dimension can be awarded a maximum of 10 points – 0= least developed, 10= best stage of development - and adjustments and weighting of the criteria are made within each dimension (see Figure 61).

A – These three dimensions relate to the Right of Establishment, addressing legal recognition, limitation on services and any unjustified restrictions.

B – These two address the Right to provide services and Contract, addressing the ability to offer full the range of contracts and the removal of restrictions on private employment services.

C – Two further cover the Right to negotiate and Social protection, addressing agency work as a sector on its own and covering the sector’s ability to implement social protection for agency workers.

D – The final three concern the Right to contribute to labour market policies, addressing access to training, public/private partnership between employment services and the commitment to fighting illegal practices.
The results of the Regulatory Efficiency Index show significant differences between countries (Figure 62). Countries with no specific or outdated regulation of agency work rank poorly in terms of Regulatory Efficiency Index (such as Turkey, Argentina, Chile, Greece, Luxembourg, Spain) while more mature markets in which regulation of private employment services has been developed and adjusted regularly to the needs of the labour markets show top scores (e.g. the Netherlands, Sweden, USA, Denmark, UK, Australia, Belgium, Germany, France).

The research provides strong evidence that markets can only operate truly efficiently if relevant and up-to-date regulation is in place, including a key role to play for social partners in balancing flexibility with security.

A particular correlation between the Regulatory Efficiency Index score and agency work penetration can be observed (Figure 63). Countries where private employment services are regulated in the most efficient way foster those regulatory conditions where the industry is the most developed and can contribute to better functioning labour markets.
Figure 62
Results of Regulatory Efficiency Index
Significant differences between countries regarding index score

- Significant differences between countries regarding index score.
- Note: Further clarification outstanding for Eastern European countries.
- Source: National federations, BCG analysis.

Figure 63
Right level of regulation allows agency work to contribute to labour market
Clear correlation between AW penetration and Regulatory Efficiency Index score

- High correlation also within clusters representing different stages of maturity.
- Note: Fractional rates available for NL, FR, TR, AU, EE and LT. Not included in correlation due to exceptional situation or data issues: ZA, IE, and LU.
- Source: National federations, BCG analyses.
PRIVATE EMPLOYMENT SERVICES OPERATE IN SIX TYPES OF ENVIRONMENT

Private employment services are inextricably linked to the nature of labour markets and these can be complex and vary from country to country. Clustering countries by their political and social systems, the impact of regulatory regimes and socio-economic and even the historic social dynamics, enables specific areas for improvement to be identified for each.

The Cluster groupings are based on three dimensions: Market dynamics – evaluating the social and economic system in the country, how labour markets perform historically and today, and the value the economy places on the labour market; Industry development – when private employment services were officially recognised, how they have developed and the stage reached today; and Regulatory environment – the regulatory environment for private employment services and how they perform on the Regulatory Efficiency Index and why.

Based on these dimensions, four main types of environments were identified:

1. **Market driven** – Countries where private employment services and labour laws are relatively liberalised and corporations enjoy a high degree of freedom in determining the most suitable form of employment. Self-regulation also plays an important role in this cluster.

2. **Social dialogue based** – Countries where private employment services and labour laws are strongly influenced by negotiations between the social partners. In this environment social partners have the freedom to determine rules by negotiation.

3. **Legislator driven** – Countries where private employment services and labour law are mainly determined by government bodies and legislation both at national and regional level, with formal legislation comprising the main basis for labour law.

4. **Emerging** – Countries where private employment services are still young and labour laws and legislation are still being developed. Legislation is evolving with significant informal work in some cases.

Three important subgroups were identified within the social dialogue based environment creating a total of six types of country cluster in which private employment services operate (Figure 64).

The market driven environments, based on the Anglo-Saxon model that includes the UK, USA, Australia and New Zealand have allowed rapid development of agency work and an open regulatory environment with liberal economies that have tended to favour flexibility over security.

The social dialogue based model can be broken down into three further subsets:

- **West European countries** including Austria, Germany, the Netherlands and Switzerland where the private employment sector is mature and above average penetration, flexibility and security are balanced and where labour markets are largely regulated by collective labour agreements between the social partners.

- **Nordic countries** including Denmark, Finland, Norway and Sweden where private employment services development is slow and the unique Nordic social economic system is at play.

- **The Asian model** – characterised by Japan - where the economy is liberal but a high value is placed on security and social acceptance.
Adapting to change

The legislator driven model, characterised by countries in Western Europe and the Mediterranean where average agency work penetration is low with a focus on job security over flexibility and historically high unemployment compared with countries operating within the social dialogue model.

The Emerging Markets model could be seen in countries across Europe, Asia and Latin America and was characterised by a very recent recognition of private employment agencies and still evolving regulatory policies as well as economic and market dynamics.

**LABOUR MARKET EFFICIENCY IS RELATED TO THE LEVEL OF DEVELOPMENT OF PRIVATE EMPLOYMENT SERVICES**

To assess overall efficiency of labour markets, the Boston Consulting Group and Ciett jointly developed the "Labour Market Efficiency Index". The index rankings are based on 6 criteria calculated for each country: overall employment rate (% working age population 15-64), employment rate 15-24, (% population15-24), Employment rate 55-64 (% population 55-64), annual hours worked (per person employed), labour participation rate (% of working age population) and unemployment rate (% of labour force).
As the data plotted by the Labour Market Efficiency Index demonstrates, the countries showing higher scores of labour market efficiency are the ones where the private employment services industry has been able to operate for many years (with the notable exception of France). By contrast, countries in which the sector has been opened only recently (e.g. Eastern Europe) or is still not appropriately regulated (e.g. Mexico, Luxembourg, Spain, Portugal) score at lower levels.

As a next analytical step, when the country clusters are mapped against the Labour Market Efficiency Index, it becomes apparent that labour markets perform differently based on the characteristics of the environment (Figure 66 & 67).

The market driven and social dialogue based clusters consistently perform better and display greater efficiency than those operating within a legislator driven environment (in part due to outdated limitations on services and entry-barriers to entry that the system places on private employment services as well as the lower capability of social partners to define the appropriate level of regulation).

Countries in the Legislator driven cluster usually place a low value on flexibility and are not able to deliver high levels of efficiency despite above average private employment services penetration. Indeed, restrictive labour markets with centralised policymaking are more likely to place a stigma around temporary work and publics will have a generally low understanding of its advantages and added value. These markets may also typically have high unemployment among young and disadvantaged groups and relatively high levels of undeclared work. The lack of full
Figure 66
Labour market performance is related to country clusters

Figure 67
The different clusters can be distinctively mapped
Different combinations of agency work penetration and Labour Market Efficiency Index
acceptance of private employment services hinders the use of their range of services to bring people into the workplace and maximise labour market participation and leads to the assumption that segmentation and even two-tier systems are likely to emerge.

Emerging markets also demonstrate higher levels of inefficiency as their legal frameworks and social systems are still in development and do not enable the private employment services to play a role. These markets, which historically have had low worker protection and a high level of precariousness and informal work, have the opportunity to develop the private employment services sector alongside their social and political systems in order to foster inclusive labour markets and facilitate adaptation to change. As these markets often also have a low skills base, they could additionally benefit from the ongoing training and upskilling offered by private employment services.

AGENCY WORK HAS DEVELOPED DIFFERENTLY IN EACH MARKET CLUSTER

A better understanding of how these market clusters emerged can be obtained by exploring how agency work has developed in each of the clusters (Figure 68). Much of the development is dependent on the specificities of the country cluster and the social economic system that the market operates in.

Figure 68
Level of industry development different within country clusters
In the market driven UK, private employment services have been allowed to flourish and provide a wide range of services. In the Netherlands, private employment services have blossomed due to their historical presence, a wish to fight undeclared work and social value being placed on flexible forms of employment. In the Nordics, private employment services grew slowly but were present and largely self-regulated or part of other collective bargaining arrangements.

The legislation cluster reveals two very different groups with the western European countries recognising private employment services relatively early and seeing steady development while the Mediterranean markets were late to recognise services compared with the rest of Europe, the industry still having limited reach.

The evidence shows that those markets which were early adopters of private employment services have achieved higher levels of penetration. However, time is not the only relevant factor underlying the penetration rate of the industry in a country with the impact of the efficiency and the enforcement of the regulation also needing to be considered.

**LABOUR MARKET EFFECTIVENESS GREATLY INFLUENCES COMPETITIVENESS**

The cluster groupings show up other metrics that unlock the rationale regarding the optimal level of regulation of private employment services to achieve labour market efficiency. When the Labour Market Efficiency Index is mapped against the 2011 World Economic Forum Competitiveness Index (see Figure 69), it is evident that some countries in the market driven Cluster perform

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**Figure 69**

Labour market effectiveness highly influences competitiveness

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1. 2010-2011 score 2. BCG analysis based on a number of key labour market metrics; for detailed methodology see appendix

Source: Eurostat; OECD; CIETT data; WEF Global Competitiveness Report 2010-2011
well, but not all, while the social dialogue countries perform well as do some of the legislator driven markets – notably France, Austria and Belgium. This underlines the importance of market relevant regulation that will deliver a transparent and well-functioning labour market and allow private employment services to play their role in creating jobs and increasingly labour market participation while supporting governments and companies through the economic cycle.

**THERE IS NO ‘ONE SIZE FITS ALL’ MODEL**

The Boston Consulting Group/Ciett research does not reveal or defend one, preferred or recommended model. The clusters are closely related to culture, institutional organisation and the way in which the society is managed. The effectiveness of approaches will depend on the society to which they are applied.

However the clusters show that there are elements and characteristics which can help to optimise effectiveness and efficiency of labour markets. Where feasible, within clusters, there is the opportunity for countries to learn from the best-practice examples of others and to pick and choose elements from other clusters if they could be made to fit in order to optimise the efficiency of their labour market.

**CHAPTER SUMMARY**

*Regulation of private employment services should balance flexibility with security. Private employment services only contribute to better functioning labour markets when appropriately regulated. The report shows that labour market efficiency is related to country clusters based on political and social systems, the impact of regulatory regimes, socio-economic and historic social dynamics. Finally, there is strong evidence to show that labour market effectiveness greatly influences the competitiveness of a country.*
Conclusions and Recommendations

Moving Forward
As structural changes in the economy become more marked, the need to encourage transparent and adaptable labour markets will become increasingly acute. Unpredictability, volatility and complexity are the key features of today’s labour markets.

Tackling skills mismatches, demographic evolution as well as sectoral and geographical shifts will require effective labour market intermediaries that can enable adaptation to change and operate on a world-scale to close the employment gap and meet supply with demand.

Private employment services are already helping economies to manage sectoral shifts and deal with shorter economic cycles. Their ability to move swiftly and introduce new and innovative solutions to labour market challenges makes them a valued partner for governments, businesses and employees. For governments, they epitomise the concept of flexibility alongside security and their increased cooperation with public employment services is testament to the sector’s determination to bring solutions to the table and drive better functioning labour markets.

For organisations seeking to operate in the new reality and to seize opportunities as they appear, the sector provides a host of added-value services and acts as a partner in finding tailor-made solutions to their staffing needs. Private employment services offer strong market knowledge combined with an on-the-ground presence that can help companies adapt to new market environments, navigating new markets and entering new countries as they embrace an increasingly global economy.

From the worker’s perspective, private employment agencies are there to guide and manage their career. They smooth their transitions in the workplace and ensure that they have the training they need to meet new job opportunities as they arise. With private employment services, workers have someone to guide their career and ensure that they have access to a large range of work opportunities and job options, leaving them free to concentrate on doing a good job and gaining new skills and experience.

The opportunity and need for private employment services to play a role in facilitating the adaptation to the new reality of labour markets is clear. The challenge is how.

The Boston Consulting Group/Ciett research clearly concludes that there is no one, best practice approach. The private employment industry needs to be viewed in the context of the market in which it operates in and the socio-economic and societal characteristics that define that market.

However, the research does show that when regulated in a way that enables it to play its role as labour market intermediary, change enabler, social innovator, creator of jobs and facilitator of transitions, the private employment industry is able to drive inclusive labour markets and provide tailor made solutions to the new employment challenges.

No single, regulatory framework emerges as optimal for enabling efficient labour markets, but within the clusters there are a number of behaviours that can be observed as consistently effective. The key to unlocking a well performing private employment sector that can support adapta-
tion to change in a volatile economy is to create balanced regulation. This balanced regulation on private employment services should de facto encompass the 4 fundamental pillars of flexicurity as defined by the European institutions:

- flexible and reliable contractual arrangements;
- comprehensive lifelong learning strategies to ensure the continual adaptability and employability of workers;
- effective active labour market policies that help people cope with rapid change;
- modern social security systems that provide adequate income support.

In addition to these 4 pillars, social dialogue has been identified as playing a key role in implementing flexicurity policies.

Economies benefit from diversification and a mobile workforce and all players need to be able to act swiftly and to have the ability to build new bases of competitive advantage if we are to sustain economic growth in the decades ahead. Hence policymakers, be they governmental or societal, need to regulate private employment services in an appropriate way in order to drive labour market efficiency.

The report makes a number of recommendations for policymakers so that they leverage the potential of the private employment sector may be leveraged. It underlines that the industry is uniquely placed to support governments, companies and workers to cope with accelerating dynamics in labour markets and manage structural change. In return it suggests that the industry should push for policymaker action in three key areas if it is to maximise its contribution to better functioning labour markets and play an active role in meeting the new economic reality.

1. **Policymakers should ensure that the regulatory framework that is in place for the private employment services sector is adequate.**
   
   a. In countries where no specific regulation of the industry exists, a legal framework should be adopted; this could be achieved by using the ILO Convention no. 181 on private employment agencies as a framework. Social partners should be closely involved in the definition of such a regulatory framework.

   b. In countries where regulation already exists, policymakers should review the conditions and restrictions that apply to the use of private employment services on a regular basis, to ensure that they are not outdated or no longer justified based on the new reality of labour markets.

2. **Policymakers should recognise that the private employment services industry is a sector on its own.** As such, it should benefit from the freedom to enter into collective bargaining and be able to negotiate with trade unions on the level of regulation and working conditions of agency workers.
3. Appropriately regulated private employment services should be involved in the designing and implementation of active labour market policies. Their contribution to facilitate transitions in the labour market, to increase labour market participation by creating jobs and reducing undeclared work and to deliver decent work should be included in public employment policies.

Private employment services enable labour markets to adapt to change. In order to further enhance its contribution to decent work and better functioning labour markets, the sector also pledges to deliver a number of key actions.

1. The sector commits to work alongside all relevant stakeholders including social partners in order to optimise regulation on private employment services. It will put emphasis on gaining further ratification of the ILO Convention 181 on private employment agencies and/or ensuring that the key provisions of the convention are being transposed in as many countries as possible around the world.

2. The sector commits to ongoing action to improve the governance and quality standards of the industry around the world. It will push and support the establishment of national federations of private employment services in countries where none yet exist. It will enhance quality norms and codes of conduct and promote the adoption of complaints and remedies procedures to handle cases of malpractice.

3. The industry commits to becoming an active career agent for workers. It will represent more widely the challenges and opportunities of today’s workplace and the initiatives needed, including up skilling, social innovation, career guidance and effective transitions in order to ensure decent work for all. In order to achieve this, the private employment sector pledges to make further investments in more and better training of its own staff and agency workers.

4. The sector will undertake greater communication efforts to explain the role that the industry plays in contributing to efficient labour markets and to fight against the unethical and illegal side of the industry. In addition to conducting further research and investigations in conjunction with trade unions, the sector pledges to work with them to fight abuses and illegal practices arising from untrustworthy, unethical and rogue private employment agencies as both parties have a common interest in doing so. These unscrupulous agencies damage the image of the well-organised and responsible agencies, represent unfair competition and lead to the unacceptable abuse of workers.

5. The sector commits to expanding its role as a labour market intermediary partnering with all relevant stakeholders to deliver inclusive, well functioning, sustainable labour markets with high levels of participation and a coordinated approach to matching supply with demand.
Annex
KEY FACTS AND FIGURES ABOUT THE PRIVATE EMPLOYMENT SERVICES INDUSTRY

The global private employment services industry employs over 25 million workers annually – equivalent to a daily average of 9.5 million workers on a full time basis. It comprises 72,000 companies around the world with 169,000 branch outlets. The majority of private employment agencies are small and medium size companies, with only a limited amount of large, international groups which operate worldwide.

Private employment companies operate in an increasingly wide sphere of Human Resource areas including agency work, permanent recruitment, interim management, executive search, outplacement and training. 819,000 people are employed within the industry.

The industry experienced strong growth during the first eight years of the millennium, recording annual revenue of some €230 billion at its peak in 2008. Like most sectors the industry was hit by the downturn, but has returned to positive growth as per mid 2010.

Europe is the leading region for the sector, accounting for 40% of total worldwide sales revenues, while Japan and USA are the global leaders by total annual sales revenues, representing 24% and 22% respectively. The UK is the third largest at 12%.

The level of agency work penetration within labour markets varies from 1.7% in Japan to 1.4% in Europe and 1.3% in the USA. Within Europe the UK is the most developed market with a workforce penetration rate of 4.8%. The top 5 countries in terms of number of agency workers are the USA, the UK, South Africa, Japan and Germany. Agency work penetration is highest in well functioning labour markets such as the UK and the Netherlands and lowest in those markets with highly inflexible employment regulations such as Greece, Spain and Romania.

Figure 70
Level of agency work penetration rate [2009]
Figure 71
Estimated €1.1T in contingent workforce spending globally

GLOBAL CONTINGENT WORKFORCE SPENDING (BN €, 2010)

- **Agency Work Staffing spend**
- **Non-Agency spend**
  - Independent Contractors
  - Freelancers
  - Independent Consultants
  - Internal Temp Pools
  - Fixed Term Contracts

Agency work still a limited share of overall global contingent workforce spend

Source: Staffing Industry Analysts Contingent Workforce Estimate – December 2010

Figure 72
Agency work penetration limited compared to all temporary contracts

Note: Employees with temporary contracts are those who declare themselves as having a fixed term employment contract or a job which will terminate if certain objective criteria are met, such as completion of an assignment or return of the employee who was temporarily replaced.

Source: Ciett, Eurostat, BCG analysis
Adapting to change

81% of companies globally use agency work at some point in order to manage economic fluctuations. However, agency work represents only a limited share of the global contingent workforce spend. In 2010 some 1.1 trillion Euros was spent on contingent workers globally. Agency work comprised just 19% of this, representing 203 billion Euros. The remainder and lion’s share of the budget spent by employers around the world went on independent contractors, freelancers, independent consultants, internal temp pools and fixed-term contracts.

THE ‘TRIANGULAR’ RELATIONSHIP

Agency work is organised in a triangular relationship between the worker, the user company and the agency. The agency employs the worker, ensures that he/she has the training and skills sets required by the job market, and then makes him/her available to the user company to undertake the work it requires. The agency acts as an intermediary matching demand with supply in the labour market. It makes transitions pay by offering training and providing a stepping stone function into the workplace thereby increasing labour market participation and diversity.

A SECTOR REACHING MATURITY

Over the past decades agency work has gained social and legal recognition and today the sector in many countries is considered to having reached a certain maturity. It is more and more recognised by society as an acceptable work alternative and useful labour market intermediary, and the sector dialogues with governments, unions and social partners to define regulation and promote efficient labour market structures.

This was not always the case and the process of acceptance and recognition has been a long one. Private employment services were banned until 1994 when the International Labour Organisation (ILO) acknowledged that the labour market was changing and that a growing need for flexibility and new forms of employment was emerging.

The ILO Convention 181, recognising private employment services was passed in 1997 and has now been ratified by 23 countries. It was followed by the EU Directive on Agency Work which was finally adopted in 2008 with the deadline for transposition into national law set for December of 2011.

FUTURE OUTLOOK FOR THE SECTOR

By the end of 2011 analysts predict the sector will be back to its pre-crisis levels. In Europe, revenue development of 11% is expected and global forecasts foresee more than 9.2 million full time equivalent agency workers. Significant bounce backs have already been observed in markets including Argentina and the USA with growth of 9% and 12% respectively and in Europe nearly all markets are showing clear signs of recovery with increasing market penetration rates. South Korea, as a fast growing economy, has been notable for consistent growth in the agency work market, even during the global crisis.
The sector is recovering in both absolute numbers and in market penetration. These recovery indicators are a testament to the crucial role that the industry plays in supporting business through seasonal and cyclical variations. The private employment services industry will have made up for the losses it experienced during the global financial crisis in a period of just two years, while other industry sectors are seeing a much more measured recovery, with many undergoing fundamental structural changes to their business model.

**Figure 73**

**European staffing forecast**

2011 European forecast market growth by country

<table>
<thead>
<tr>
<th>Country</th>
<th>2011 European forecast market growth by country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>12%</td>
</tr>
<tr>
<td>Denmark</td>
<td>21%</td>
</tr>
<tr>
<td>Finland</td>
<td>9%</td>
</tr>
<tr>
<td>France</td>
<td>12%</td>
</tr>
<tr>
<td>Germany</td>
<td>12%</td>
</tr>
<tr>
<td>Ireland</td>
<td>5%</td>
</tr>
<tr>
<td>Italy</td>
<td>10%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>8%</td>
</tr>
<tr>
<td>Norway</td>
<td>3%</td>
</tr>
<tr>
<td>Spain</td>
<td>10%</td>
</tr>
<tr>
<td>Sweden</td>
<td>9%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>11%</td>
</tr>
<tr>
<td>UK</td>
<td>9%</td>
</tr>
<tr>
<td>European Total</td>
<td>11%</td>
</tr>
</tbody>
</table>

Source: Staffing Industry Analysts European Staffing Market Forecast May 2011
Glossary
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full name</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AW</td>
<td>Agency Work</td>
<td>This describes the full range of work solutions offered by private employment services. Included in this definition are temporary agency work, permanent recruitment, interim management, outplacement, and outsourcing.</td>
</tr>
<tr>
<td>Assignment</td>
<td>Assignment</td>
<td>Period of time that a temporary employee is working at an organisation’s facility. An assignment can be made of several temporary contracts being renewed.</td>
</tr>
<tr>
<td>CLA</td>
<td>Collective Labour Agreement</td>
<td>An agreement between a trade union and an employer on behalf of a specified group of workers, usually relating to their pay and other working conditions.</td>
</tr>
<tr>
<td>CW</td>
<td>Contingent work/worker</td>
<td>Used to describe work arrangements that differ from regular/permanent, direct wage and salary employment. Contingent workers most often include temporary employees provided by an outside staffing agency and independent contractors/consultants. Contingent workers may also include temporary workers from an internal pool, and others (such as summer interns) employed directly by an organisation for an intentionally limited time period. They do not include work done by consulting firms or by part-time regular employees, and are primarily distinguished by an explicitly defined tenure. Self-employed individuals should only be defined as contingent workers if they provide themselves as contract labour to other organisations. Otherwise, they should not be considered in the contingent workforce. Outsourcing also falls outside of the contingent work definition, because it defines a vendor-supplier relationship, not an employer-worker relationship. The “contingent worker” label applies to all workers of any skill type or experience level who meet this definition, including those in professional, blue-collar, or office/clerical roles.</td>
</tr>
</tbody>
</table>
**Fixed Term Contract**

A contract of employment or relationship entered into directly between an employer and a worker, where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

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**FTE**

Full-Time Equivalent

Used to describe the total daily average number of agency workers. The total number of hours worked by all agency workers in a country over a period of one year is divided by the average number of hours worked over a period of one year by a worker with a full-time job with an open-ended contract.

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**Illegal work**

Illegal work

This refers to employment situations where workers get all or part of their wages paid cash in hand; and tax and social security contributions are not paid on the wages when they should have been; and workers were aware that being paid in this way is to avoid paying tax and/or social security contributions. Contracts will also be illegal if it is for an immoral or illegal act. A contract of employment will not be illegal if only one of the parties is not declaring the payments and/or making appropriate deductions (see undeclared work).

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**Independent Contractor**

Self-employed individual performing services for a company under contract rather than as an employee, either on- or off-site, also referred to as freelancers, consultants. Unlike an employee, an independent contractor is free to perform their work as he or she sees fit. To determine the status of independent consultants, the US Internal Revenue Service uses a three-factor test consisting of examinations of behavioural control (does the client direct or control the manner in which work is performed), financial control (of the timing and method of payment), and relationship of the parties (if the worker free to pursue other clients or in a binding relationship with the company).
<table>
<thead>
<tr>
<th>MSP</th>
<th>Managed Service Provider/ Programme</th>
<th>A form of outsourcing whereby a company chooses to contract with a third party to provide the management of its contingent worker programme and its suppliers of contingent (temporary) labour.</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-Call work</td>
<td>On-Call Work</td>
<td>The implementation of on-call schedules varies. For many occupations, workers leave their place of employment and are placed “on-call” on evenings and weekends, which means they can be called back to work during these periods. Generally, but not always, employees are compensated monetarily for the period of call, usually with a stipend which is less than their hourly rate. When on-call employees are usually expected to restrict their use of alcohol and limit distance or travel time from the work-site. The on-call experience of these workers includes aspects of interruption, either of sleep or family or social life, and often includes an element of uncertainty as to the time of call or the occurrence of the call.</td>
</tr>
<tr>
<td>Outplacement</td>
<td>Outplacement</td>
<td>A service to guide a terminated employee of a company to a satisfactory new position or career through the provision of short- or long-term counselling and support services, on a group or individual basis, most often paid for by the terminating employer.</td>
</tr>
<tr>
<td>Outsourcing</td>
<td>Outsourcing</td>
<td>Use of an outside business services vendor (and its supervised personnel), either on the customer’s premises or off-site at the vendor’s location, to perform a function or run a department that was previously staffed and supervised by the customer directly. (Sometimes, but not necessarily, limited to situations where some or the entire customer’s previous staff performing that function are hired by the outsourcing vendor.)</td>
</tr>
<tr>
<td>Permanent Placement</td>
<td>Permanent Placement or recruitment</td>
<td>The bringing together of a job seeker and a prospective employer for the purpose of effecting a traditional employment relationship, for a fee (to be charged to the employer). Also refers to the process of arranging such a relationship.</td>
</tr>
</tbody>
</table>
Public Employment Services (PES)

Public employment services are usually part of ministries of labour or, less often, operate as separate executive agencies. They plan and execute many of the active, and sometimes passive, labour market policies used to help workers enter the labour market, to facilitate labour market adjustments, and to cushion the impact of economic transitions. To do this, public employment services typically provide labour market information; offer job-search assistance and placement services; administer unemployment insurance benefits; and manage various labour market programmes (worker displacement assistance, retraining, public service employment, etc.).

Private Employment Agency (PrEA)

Means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there from;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person [referred to below as a “user enterprise”] which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organisations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

Private Employment Services (PrES)

Services offered by private employment agencies, ranging from temporary agency work to outsourcing, payrolling, staff planning etc.
<table>
<thead>
<tr>
<th>Self Employed</th>
<th>Temporary Agency Work</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Self Employed</strong></td>
<td><strong>Temporary Agency Work</strong></td>
</tr>
<tr>
<td>Those who work in their own business, professional practice or farm for the purpose of earning a profit, and who employ no other persons. A self-employed person may also be defined as an independent worker, in contrast with an employee, who is subordinate to and dependent on an employer.</td>
<td>An employment relationship where the worker is employed by the temporary work agency, and then hired out to perform his/her work at (and under the supervision of) the user company. There is no employment relationship between the temporary agency worker and the user company, although there could be legal obligations of the user company towards the temporary agency worker, especially with respect to health and safety. A labour contract may be of limited or unspecified duration with no guarantee of continuation. The employment is often called “temporary work”, “temping” or “agency work”.</td>
</tr>
</tbody>
</table>
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Volker Rieble, Ludwig-Maximilians-University Munich
Wallis Goelen, DG Employment
Wolfgang Mueller, Bundesagentur für Arbeit Europavertretung
Dear Members,

In response to increasingly strong opposition, especially by trade unions, to all forms of employment that are not eight hours a day / five days a week, the IOE has elaborated this position paper on flexible forms of work.

The paper aims to highlight the benefits of these flexible forms of work, not only for businesses - by enabling them to retain and create jobs whilst staying adaptable and competitive - but also for workers, especially the young, the unemployed, low-skilled workers, and workers with family responsibilities which make full-time work impractical, by giving them the chance to acquire work experience and new skills and by facilitating a better work-life balance.

This position paper reflects the views of enterprises in current contexts and is certainly not definitive. We hope it will be of practical use to you in addressing these issues at national level.

We also invite feedback on your experiences and developments in your respective countries so that we can continue to strengthen our advice and information.

Brent H. Wilton
Secretary-General
Executive Summary

Flexible forms of employment such as fixed-term contract work, part-time work and temporary agency work are components of inclusive and dynamic labour markets, which are necessary and useful to complement open-ended full-time employment. They are important not only as elements of flexibility for employers, but also because they contribute to the improvement of the quality of working life and to the employability of people by facilitating a better work-life balance, by reinforcing the ability of workers to find new employment when existing jobs disappear and by increasing their opportunities to acquire professional experience. In particular, flexible forms of employment can help the most vulnerable groups, namely young people at the start of their careers, the long-term unemployed and low-skilled workers, to regain a foothold in the labour market by giving them the chance to acquire work experience and new skills. Flexible forms of employment are also key enablers for businesses to retain and create jobs whilst staying adaptable and competitive.

It is therefore misleading and counterproductive if trade unions and certain political groups misrepresent flexible forms of work as ‘precarious’. According to ITUC, precarious work is characterised by atypical employment contracts, with limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease. Employers are concerned by the lack of clarity and usefulness of the definition of ‘precarious work’ and particularly by suggestions that flexible forms of employment are systematically precarious.

Precariousness, as defined by ITUC, prevails in the informal economy. Employers are strongly committed to fundamental principles and rights at work. They therefore believe that illegal employment and jobs which clearly do not respect these principles must be unreservedly discouraged.

The IOE has prepared this paper to express the position of employers on flexible forms of work. It highlights the distinction between flexible forms of work and ‘precarious work’ and draws attention to the importance of flexible forms of employment to workers, employers and the economy in general.

Flexible forms of work are necessary components of dynamic and inclusive labour markets

As indicated above, ITUC defines precarious work as atypical employment contracts, with limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease.

1 ITUC - World Day for Decent Work 2011 (http://www.ituc-csi.org/unions-worldwide-mobilise-for)
This definition is vague as terms such as ‘atypical’ are no longer useful in the context of modern labour markets and can be misleading\(^2\). It is worth recalling that Guy Ryder, ILO Director General, in his report to the 2012 International Labour Conference (ILC), properly stated that “the supposedly ‘atypical’ employment] has become typical; the ‘standard’ has become the exception. Views are strongly divided as to whether and how this matters for the attainment of decent work for all and, if so, what if anything should be done about it”.

Furthermore, flexible forms of employment do not automatically imply this so-called precariousness, nor the absence of social benefits and statutory entitlements, low wages, high risks of occupational injury and disease.

For these reasons the IOE does not consider this concept of ‘precarious work’ as useful to properly channel further discussions on working conditions. In fact, this reference is not adapted to dynamic and inclusive labour markets, and is misleading.

For employers, the foundation for decent jobs includes:

- a. Compliance with national labour law and the effective enforcement of legal rights. This includes domestic laws which give effect to international treaty commitments.

- b. Respect for internationally recognised rights, including those reflected in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work.

- c. A legal framework that is conducive to the integration into the labour market of people with different needs and allows for companies’ flexibility requirements

**Besides,** in an increasingly dynamic labour market, being employable and advancing in career paths are much more important than focusing on the current employment situation. It is therefore essential to shift emphasis from the “job security” concept to the broader one of employment security, whereby everyone can smoothly and securely transition from one job to another, rather than drop out of the labour force.

To classify flexible forms of work as precarious risks hindering progress in identifying the root causes of poor working conditions. It is important to identify the issues linked to poor working conditions, such as those associated with the informal economy where measures must be taken to promote formalisation.

Employers are concerned with ensuring respect for fundamental principles and right at work and note that the lack of minimum working conditions largely prevail in undeclared and illegal work. However, debates on alleged ‘precarious work’ are too frequently linked to the types of labour contract, even though no direct correlation can be established. Flexible contracts do not automatically imply a lack of decent employment and working conditions.

\(^2\) See the report “Towards the ILO centenary: Realities, renewal and tripartite commitment” presented at the 102nd Session of the International Labour Conference, (paragraph 71)
What are flexible forms of work?

Flexible forms of work are not new; they are forms of employment that are in sync with the evolutions in society and workplaces and enable employers to continue hiring whilst remaining competitive in a changing environment, with changing employment preferences and needs. In general, they include temporary work, part-time work, agency work, and any other forms of employment that complement work practice that is systematically eight hours a day and five days a week.

According to the OECD, many workers choose flexible forms of employment such as part-time work, as they respond best to their needs. Therefore, policy and regulatory frameworks should support new working options as specific avenues to facilitate more employment for more people.

Flexible work approaches are important in retaining jobs during a crisis. The OECD has identified part-time work as a way to mobilise groups with traditionally low labour market participation, such as those caring for young children, individuals with health problems, persons with a disability and older workers. It can also be a stepping stone to other positions. There should not be further limitations to employment for these groups so as to prevent their long-term unemployment.

Persons who are unemployed need as wide and flexible a range of options to re-enter the labour market as soon as possible, including for example, Part-time, temporary and contract engagement and agency work. Employers need better options to offer employment without taking on significant legal and financial risk. They need active support to get back into the business of hiring.

Working time and task flexibility as well as cross-functions have also an important role to play. The introduction of such flexible forms of work is also important to help employees to improve balance between professional and private life.

The IOE acknowledges that in many countries flexible forms of employment involve trade-offs and challenges, mainly due to the interaction with the social protection system. This is an area that requires attention. Social protection systems that support both individuals in need and jobs growth should be built.

Debunking the myths surrounding flexible forms of work

Myth 1: Flexible forms of employment substitute traditional forms of employment

Permanent staff members have not been systematically squeezed out and substituted by temporary workers. In Germany, between 2006 and 2012, an additional 2.1 million mainstream employment relationships (liable for social insurance contributions) were created which is nearly seven times more than the increase of flexible forms of work (317,000). The share of employees in a flexible work relationship decreased in the same timeframe from 25.5% to 24.6%. From June 2010 to June 2012 alone, the number of employment contracts subject to social insurance contributions increased by 1.2 million. As far as permanent staff is concerned, they have an important role to play in training and transferring knowledge to other employees.

In fact, flexible forms of employment complement rather than substitute the traditional form of employment. They offer job opportunities to those who would otherwise be unemployed and offer
employers the room to manoeuvre to ensure businesses continuity and resilience, especially at times of crisis.

In the first semester of 2009, 62% of newly employed temporary agency workers had either been out of work before taking on their job, or had never been employed before. In the USA, 80% of the jobs given to agency workers are to fill in for absent employees or temporary vacancies.

**Myth 2: Flexible forms of employment reduce employment security and welfare of workers**

Flexibility and security are not opposites; they are mutually supportive. This explains why flexicurity could be adopted in countries where budgets permit. Flexicurity is about “moving away from a job-preservation mind-set to a job-creation mind-set, helping workers to maximise their chances on the labour market and helping companies to face the challenge of global competition and the need to change.”

Research shows that employment stability, measured by the duration of the tenure of a job with the same employer, does not necessarily equate to a perceived sense of security. For example, the Netherlands and Denmark have low average job tenure, but the perception of employment security remains among the highest.

Flexible work improves the welfare of workers by reducing undeclared illegal work. For example, following the introduction of legislation on agency work in Italy, a drop of 2% in the undeclared work market was registered between 2001 and 2004.

In terms of quality, these so-called non-standard forms of work are not necessarily linked to fewer training opportunities. For example, private employment agencies invest in training workers to ensure that the right skills are created to better match workers with labour market requirements and improve their chances of employability.

Incomes of those employed under flexible contracts are not necessarily lower. In fact, the correlation between non-traditional forms of employment and lower rates of pay can be attributed to the fact that many workers employed under flexible contracts have low skills’ levels. These workers would have been unemployed otherwise. It is therefore important to understand the nature of the causality. In addition, it should not be ignored that workers often ask for flexibility as it allows for better work-life balance.

**Why flexible forms of employment are important for all**

Having an enabling environment for employment, enterprise creation and entrepreneurship are fundamental to sustainable development, economic prosperity and social stability. Many factors contribute to developing an enabling environment for employment creation, and flexibility is one of the crucial underlying elements, especially in a macro environment transformed by crisis and demographic transition. It is important not to narrow avenues into work that are lawful, regulated and used successfully by employers and workers to create and find jobs in adverse labour market and operating circumstances.

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3 Ciett Economic Report 2011  
4 De Buck, 2008  
5 ILO 2005, Protected mobility for employment and decent work  
6 Eurofound  
7 Ciett Economic Report 2011
1. Flexible forms of employment as stepping stones into the labour market, especially for groups vulnerable to unemployment

Flexible forms of employment act as stepping stones into full-time and/or permanent employment contracts especially for the most vulnerable groups on the labour market: the long-term unemployed, the low-qualified and those without any work experience. For these people, flexible forms of work are a means of overcoming precarious living conditions.

For example, in Germany, 22% of all part-time workers employed in 2012 were either long-term unemployed or not active on the labour market (hidden labour force) at all before. In the UK, 92% of workers believed that agency work is an effective way to find a first job, and 90% agreed that it is effective in helping to find a full-time job.

Flexible forms of work enable employment for groups with lower productivity and higher risks of unemployment, thus integrating unskilled people into the labour market and reducing the risk of hardening long-term unemployment.

Agency work gives “outsiders” a viable access to the labour market. Ethnic minorities, older people, the incapacitated and the long-term unemployed accounted for 31% of agency workers in the Netherlands in 2008.

According to the OECD 2008 Employment Outlook, temporary work serves as a major entry mode into permanent jobs for many young people. In 2006 in the Czech Republic, over 70% of young people (aged 15 – 24) found temporary work, as they did not have the right qualifications for a permanent job.

According to research by the OECD with some European countries, the probability of youth getting a permanent job one year after working at a temporary job is found to be higher than after being unemployed. This highlights the notion that it is employability and skills that make individuals more secure, not necessarily that jobs are more secure or insecure.

2. Flexibility as a necessity for business to remain competitive and sustain operations

To create and retain employment in the competitive economy today, enterprises need to be able to be dynamic in order to innovate and adapt in a responsible manner to constantly changing market needs. This means that enterprises need to be able to access flexible forms of employment.

Flexible forms of employment allow employers the flexibility to deal with fluctuations in product demand, prices and costs, enabling them to respond quickly and efficiently to adjust to demand fluctuations/spikes. It should be noted that usually all forms of flexibility related to working hours are exploited before agency work is called upon.

8 IAB-Kurzbericht, 19/2013
9 Joint study by BCG and Ciett, 2011.
10 Ciett Economic Report, 2011
11 OECD, 2005-06 data from the European Survey on Income and Living Conditions; the countries where data are available are UK, Ireland, Belgium, Luxembourg, France, Greece, Finland, Italy and Spain.
12 Bellmann, 2012
As business confidence is still building up post-crisis, it is important for companies to be able to access temporary workers, often as a first experience before they become permanent employees. A flexible workforce is a key enabler in being responsive and successful in this environment\textsuperscript{13}.

Besides, part-time and temporary work prevents massive retrenchment and allows employers to retain permanent staff and their skills. Since hiring and dismissal, as well as training costs, can sometimes be significant, it is important for employers to be able to retain their staff to accommodate the ups and downs of the business cycle and avoid the costs associated with the hiring, dismissal and training of new staff.

Flexible contracts may also be used in case of temporary absences of regular employees due to illness, holidays or child care leave. Temporary work is used to replace absence because of (longer and predictable) maternity leave, while agency work is usually replacing absence due to sick leave, which is less long but also less predictable\textsuperscript{14}.

3. Flexible forms of employment promote employment creation and/or suppress growth of unemployment

Flexible forms of employment promote employment creation by allowing available work to translate into jobs. Hence, flexible forms of employment alleviate the burden of funding a large pool of unemployment benefits, allowing tax rates to remain low and competitive for workers and employers.

A high incidence of flexible employment has a large positive impact on labour market dynamics. For instance, in Spain, a rise of 1\% in the share of temporary employment increased flows from unemployment to employment by 0.16\%\textsuperscript{15}.

A diversity of labour contracts to meet the needs of business enables enterprises to offer jobs that they would not otherwise be able to. A company that is not ready to hire someone on a permanent basis may be inclined not to hire at all due to restrictions, giving rise to a situation where work is there, but jobs are not created.

Furthermore, research results demonstrate that enterprises using a variety of labour contracts (including temporary and agency work) recruited more employees than those which did not use this type of contract. Average recruitment rate at enterprises with fixed-term labour contracts was equal to 8\% in 2009 increasing to 19\% in 2010, whereas it remained at the level of 13\% in 2009-10 at enterprises using only traditional forms of employment. The number for recruiting employees was even higher at enterprises using agency work contracts. It was equal to 21\% of the average number of employees in 2009 and increased to 23\% in 2010. Enterprises using agency work contracts therefore increased employment by about one-fifth during the recent crisis and period immediately afterwards. It was almost twice as much as the recruiting value of enterprises using only open-ended contracts and 3-5 percentage points higher than at enterprises with fixed-term contracts.

\textsuperscript{13} CEEMET, \textit{Flexible forms of employment, February 2012}
\textsuperscript{14} Hagen and Boockmann, 2002
\textsuperscript{15} Employment in Europe, 2010
While traditional labour contracts did not promote an employment increase in Russian enterprises, they kept employment at a fixed level due to the increase of employment flexibility for some categories of employees. The increased flexibility on the labour market resulted in the suppression of unemployment growth, which represents a positive contribution of non-traditional labour contracts to the economy.

Indeed, having a variety of contractual arrangements that complement the full-time, open-ended contract allow workers to remain in touch with the working world, and prevent them from losing their technical knowledge and general skills for work, while in turn ensuring their employability and enhancing their employment opportunities.

4. Flexible forms of employment improve the efficiency and effectiveness of job matching

The variety of contractual labour arrangements will increase labour market participation and diversity at workplaces. Furthermore, flexible forms of employment, and agency work, facilitate efficient matching of needs and preferences.

Employment contracts need to evolve to continue meeting changing worker and employer needs and preferences so as to be able to continue tapping into the working population available in a society. People should not be obliged to conform to outdated social norms; instead, workers and employers need to have the space to organise working arrangements that suit the needs and preferences of both parties.

Diversity of contractual labour arrangements is key to addressing the increasingly diverse needs of both companies and individuals. Not all individuals are looking for a permanent, full-time job and an increasing proportion are willing to balance private and professional life through part-time work, such as working parents and older workers. If part-time work is not allowed, these workers will lose opportunities to work and employers will not be able to find a suitable candidate to fill part-time positions.

Temporary work also caters to employees who wish to try different companies and areas of activity, enhancing their professional skills set. This is particularly relevant for the young generation. It is necessary for workers as it offers the opportunities to experience different areas of work and ensures that their final chosen jobs fit their aspirations, preferences and personalities. This cements job matching and reduces turnover risks.

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